

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MISSY CHASE LAPINE and THE SNEAKY
CHEF, INC.,

Plaintiffs,

v.

JESSICA SEINFELD, JERRY SEINFELD,
HARPERCOLLINS PUBLISHERS, INC., and
DEPARTURE PRODUCTIONS, LLC,

Defendants.
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ORAL ARGUMENT REQUESTED

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08-CV-128 (LTS) (RLE)

**DECLARATION OF ORIN SNYDER IN SUPPORT OF THE MOTION OF JESSICA
SEINFELD, HARPERCOLLINS PUBLISHERS, INC. AND DEPARTURE
PRODUCTIONS LLC TO DISMISS THE AMENDED COMPLAINT**

ORIN SNYDER, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel to Defendant Jerry Seinfeld ("Mr. Seinfeld"). I respectfully submit this Declaration in support of Jessica Seinfeld, Harper Collins Publishers, Inc. and Departure Productions LLC's Motion to Dismiss the First, Second, Third, Fourth, Fifth, Seventh and Eighth Claims of the First Amended Complaint.

2. Exhibit A is a true and correct copy of *Deceptively Delicious* by Jessica Seinfeld, published by Collins in hardcover in October 2007.

3. Submitted as Exhibit B is a true and correct copy of *The Sneaky Chef* by Missy Chase Lapine, published by Running Press in paperback in April 2007.

4. Exhibit C contains true and correct copies of excerpts from the following works:

- (a) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).
- (b) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).
- (c) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).
- (d) Melissa Clark, "Sneak It In: Sweet Potato," *Cookie Magazine*, Oct./Nov. 2006.
- (e) Melissa Clark, "Sneak It In: Squash," *Cookie Magazine*, July/Aug. 2006.
- (f) "Hide and Go Sneak," *Food Network*, Aug. 11, 2004, available at http://www.foodnetwork.com/food/lf_kids/article/0,1904,FOOD_16382_3103342,00.htm.
- (g) Marla Bazar Sochet, "25 Surprising Ways to Sneak More Fruits And Veggies Into Your Child's Diet," *Parents Magazine*, Vol. 75, Issue 7 (2000).
- (h) Nava Atlas, "Getting Sneaky," *Vegetarian Times*, Nov./Dec. 2004.

- (i) Joy Bauer, "The Sneaky Gourmet: 15 Ways to Disguise Vegetables," *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).
- (j) "20 Ways to Raise a Veggie Lover," *Parents Magazine*, May 2006.
- (k) Dina Roth Port, "Moms' Best Feeding Tricks: How to Entice Even the Pickiest Eaters," *Parenting Magazine*, Feb. 2006.
- (l) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).
- (m) "Eating Green the Devious Way," Jan. 23, 2006, *available at* <http://daycaredaze.wordpress.com/2006/01/23/eating-green-the-devious-way/>.
- (n) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).
- (o) Jane E. Brody, *Jane Brody's Good Food Book: Living the High-Carbohydrate Way* (W.H. Norton & Company, Inc. 1985).
- (p) Alan D. Woolf, Howard C. Shane and Margaret A. Kenna, eds., *The Children's Hospital Guide to Your Child's Health and Development* (Perseus Publishing 2001).
- (q) Vicki Lansky, *Feed Me I'm Yours* (Meadowbrook Press 1994).
- (r) Henry Legere, *Raising Healthy Eaters: 100 Tips for Parents* (Capo Press 2004).

(s) Annabel Karmel, *Superfoods for Babies and Children* (Atria Books 2006).

(t) Donna Smith, "Hidden Veggies," Mar. 26, 2001, *available at* http://www.suite101.com/article.cfm/kids_in_the_kitchen/64284.

(u) Sarah Caron, "Sneaking Extra Nutrition into Family Meals," June 13, 2006, *available at* http://fitfare.net/2006/06/13/sneaking_extra_nutrition_into_family_meal/.

(v) "Sneaking Nutrition into Your Kids' Meals," *In a Vegetarian Kitchen with Nava Atlas*, 2005, *available at* <http://vegkitchen.com/kid-friendly-recipes/sneaking-nutrition.htm>.

(w) Harvey Karp, *The Happiest Toddler on the Block* (Bantam Dell 2004).

(x) Arlene Eisenberg, Heidi E. Murkoff and Sandee E. Hathaway, *What to Expect: The Toddler Years* (Workman Publishing Company, Inc. 1996).

(y) Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).

(z) Hilda Sachs, *So Your Child Won't Eat!* (Sterling Publishing Co., Inc. 1951).

(aa) Deanna F. Cook, *Disney's Family Cookbook* (Worzalla Publishing Co. 1996).

(bb) Undercover Vegetable Co., "Yotta Bar: Sneak More Veggies Into Your Diet!," *available at* <http://www.undercoverveg.com/about.html>.

(cc) Katherine Brooking, "Mission Nutrition: Eat Your Veggies!," September 13, 2006, *available at* <http://www.nymetroparents.com/newarticle.cfm?colid=7988>.

(dd) Jane Kinderlehrer, *Smart Muffins* (Newmarket Press 1987).

(ee) Elaine North, *Adventures of Nebraska Wade* (iUniverse, Inc. 2004).

(ff) Ronnie Litz Julien, *What Should I Feed My Kids: How to Keep Your Children Healthy by Teaching Them to Eat Right* (Career Press 2006).

(gg) Joshua Piven, David Borgenicht and Sarah Jordan, *The Worst Case Scenario Survival Handbook: Parenting* (Quirk Productions, Inc. 2003).

(hh) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbook Press 1999).

5. Exhibit D contains true and correct copies of excerpts from the following works:

(a) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(b) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).

- (c) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).
- (d) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).
- (e) Janice Newell Bissex and Liz Weiss, *The Mom's Guide to Meal Makeovers: Improving the Way Your Family Eats, One Meal at a Time!* (Broadway Books 2004).
- (f) Annabel Karmel, *Superfoods for Babies and Children* (Atria Books 2006).
- (g) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).
- (h) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).
- (i) Jane Kinderlehrer, *Smart Muffins* (Newmarket Press 1987).
- (j) Joohee Muromcew, *The Baby Bistro Cookbook*, St. Martin's Press (2003).
- (k) Deanna F. Cook, *Disney's Family Cookbook* (Worzalla Publishing Co. 1996).
- (l) Annabel Karmel, *Top 100 Baby Purees* (Atria Books 2005).

(m) Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).

(n) Vicki Lansky, *Feed Me I'm Yours* (Meadowbrook Press 1994).

(o) O. Robin Sweet and Dr. Thomas A. Bloom, *The Well-Fed Baby*, MacMillan (1994).

(p) Karin Knight and Jeannie Lumley, *1 2 3 Cook for Me: Over 300 Quick, Easy, and Healthy Recipes for Babies and Toddlers*, Fair Winds Press (2006).

(q) Annabel Karmel, *The Healthy Baby Meal Planner* (Fireside 2005).

6. Exhibit E contains true and correct copies of excerpts from the following works:

(a) Janice Newell Bissex and Liz Weiss, *The Mom's Guide to Meal Makeovers: Improving the Way Your Family Eats, One Meal at a Time!* (Broadway Books 2004).

(b) Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).

(c) Bridget Swinney, *Healthy Food for Healthy Kids*, Meadowbrook Press (1999).

(d) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).

(e) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

7. Exhibit F contains true and correct copies of excerpts from the following works:

(a) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).

(b) Annabel Karmel, *The Healthy Baby Meal Planner* (Fireside 2005).

(c) Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).

(d) Joy Bauer, *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).

(e) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(f) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).

(g) Janice Newell Bissex and Liz Weiss, *The Mom's Guide to Meal Makeovers: Improving the Way Your Family Eats, One Meal at a Time!* (Broadway Books 2004).

(h) Karin Knight and Jeannie Lumley, *1 2 3 Cook for Me: Over 300 Quick, Easy, and Healthy Recipes for Babies and Toddlers* (Fair Winds Press 2006).

8. Exhibit G contains true and correct copies of excerpts from the following works:

- (a) Hilda Sachs, *So Your Child Won't Eat!* (Sterling Publishing Co., Inc. 1951).
- (b) Beth Rogers, "Sprinkles in Her Cereal," *available at* http://www.divinecaroline.com/articles/prINTER_friendly/22107/26569/
- (c) Liz Pearson, "Menu Makeover: A week's worth of great meals for picky eaters," The Pearson Institute of Nutrition, *available at* http://www.lizpearson.com/liz_books.php?id=54.

9. Exhibit H contains true and correct copies of excerpts from the following works:

- (a) Ann Cooper and Lisa M. Holmes, *Lunch Lessons: Changing the Way We Feed Our Children* (HarperCollins Publishers 2006).
- (b) Annabel Karmel, *Top 100 Baby Purees* (Atria Books 2005).
- (c) Sylvia J. Lavietes, Mary E. McDonnell and William V. Tamborlane, *The Yale Guide to Children's Nutrition* (Yale University 1997).
- (d) Ronnie Litz Julien, *What Should I Feed My Kids: How to Keep Your Children Healthy by Teaching Them to Eat Right* (Career Press 2006).
- (e) Henry Legere, *Raising Healthy Eaters: 100 Tips for Parents* (Da Capo Press 2004).

(f) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).

(g) Domenica Catelli, *mom-a-licious*, Waterside Productions, Inc. (2007).

10. Exhibit I contains true and correct copies of excerpts from the following works:

(a) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(b) Deanna F. Cook, *Disney's Family Cookbook* (Worzalla Publishing Co. 1996).

(c) Sylvia J. Lavietes, Mary E. McDonnell and William V. Tamborlane, *The Yale Guide to Children's Nutrition* (Yale University 1997).

(d) Annabel Karmel, *Superfoods for Babies and Children* (Atria Books 2006).

(e) Jane E. Brody, *Jane Brody's Good Food Book: Living the High-Carbohydrate Way* (W.H. Norton & Company, Inc. 1985).

11. Exhibit J contains true and correct copies of excerpts from the following works:

(a) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(b) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbrook Press 1999).

(c) Annabel Karmel, *The Healthy Baby Meal Planner* (Fireside 2005).

(d) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).

(e) Vicki Lansky, *Feed Me I'm Yours* (Meadowbrook Press 1994).

(f) O. Robin Sweet and Dr. Thomas A. Bloom, *The Well-Fed Baby* (MacMillan 1994).

(g) Annabel Karmel, *Superfoods for Babies and Children* (Atria Books 2006).

(h) Sandra K. Nissenberg, Margaret L. Bogle and Audrey C. Wright, *Quick Meals for Healthy Kids and Busy Parents*, John Wiley & Sons, Inc. (1995).

12. Exhibit K contains true and correct copies of excerpts from the following works:

(a) Joohee Muromcew, *The Baby Bistro Cookbook* (St. Martin's Press 2003).

(b) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).

(c) Annabel Karmel, *Top 100 Baby Purees* (Atria Books 2005).

(d) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).

(e) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

(f) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbook Press 1999).

(g) Jane Kinderlehrer, *Smart Muffins* (Newmarket Press 1987).

13. Exhibit L contains true and correct copies of excerpts from the following works:

(a) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(b) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).

(c) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).

(d) Janice Newell Bissex and Liz Weiss, *The Mom's Guide to Meal Makeovers: Improving the Way Your Family Eats, One Meal at a Time!* (Broadway Books 2004).

(e) Annabel Karmel, *Superfoods for Babies and Children* (Atria Books 2006).

(f) Joohee Muromcew, *The Baby Bistro Cookbook* (St. Martin's Press 2003).

(g) Domenica Catelli, *mom-a-licious* (Waterside Productions, Inc. 2007).

(h) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbook Press 1999).

(i) Joy Bauer, *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).

14. Exhibit M contains true and correct copies of excerpts from the following works

(a) O. Robin Sweet and Dr. Thomas A. Bloom, *The Well-Fed Baby* (MacMillan 1994).

(b) Jane Kinderlehrer, *Smart Muffins* (Newmarket Press 1987).

(c) Annabel Karmel, *The Healthy Baby Meal Planner* (Fireside 2005).

(d) Joy Bauer, *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).

(e) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).

15. Exhibit N contains true and correct copies of excerpts from the following works:

- (a) Annabel Karmel, *SuperFoods for Babies and Children* (Atria Books 2006).
- (b) Jane Kinderlehrer, *Smart Muffins* (Newmarket Press 1987).
- (c) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).
- (d) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).
- (e) Annabel Karmel, *Top 100 Baby Purees* (Atria Books 2005).
- (f) Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).
- (g) Bridget Swinney, *Healthy Food for Healthy Kids*, Meadowbook Press (1999).

16. Exhibit O contains true and correct copies of excerpts from the following works:

- (a) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

(b) Karin Knight and Jeannie Lumley, *1 2 3 Cook for Me: Over 300 Quick, Easy, and Healthy Recipes for Babies and Toddlers* (Fair Winds Press 2006).

(c) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(d) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).

(e) Annabel Karmel, *Top 100 Baby Purees* (Atria Books 2005).

(f) Joy Bauer, *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).

(g) Mary Beth Lagerborg and Karen J. Parks, *Beyond Macaroni and Cheese*, Zondervan (1998).

(h) Michael Van Straten and Barbara Griggs, *Super Foods for Children* (DK Publishing 2001).

17. Exhibit P contains true and correct copies of excerpts from the following works:

(a) Nancy Silverton, *A Twist of the Wrist: Quick Flavorful Meals with Ingredients From Jars, Cans, Bags, and Boxes* (Alfred A. Knopf 2007).

18. Exhibit Q contains true and correct copies of excerpts from the following works:

- (a) "Chocolate Pudding," *Kids Health*, June 2006, available at http://69.7.225.164/parent/recipes/pregnant/choc_pudding.html.
- (b) Karen Knowler, "Chocolate (Carob) Avocado Pudding," March 20, 2007, available at <http://rawfoodrightnow.blogspot.com/2007/03/chocolate-carob-avocado-pudding-recipe.html>.
- (c) "Raw Vegan Chocolate Pudding," *The Raw Table*, 2006 available at <http://www.therawtable.com/recipecoll/chocpudd.htm>.
- (d) "Oatmeal Chocolate-Chip (And Bean!) Cookies," *SELF*, Dec. 2006, available at <http://www.epicurious.com/recipes/food/views/OATMEAL-CHOCOLATE-CHIP-AND-BEAN-COOKIES-230170>.
- (e) Anne B. Adams and Nancy Nash-Cummings, "Chocolate chip cookies --- with beans!," *The Topeka Capital-Journal*, Sept. 28, 1999, available at http://findarticles.com/p/articles/mi_qn4179/is_19990928/ai_n11731967.
- (f) Jackie Plant and Fraya Berg, "Spinach Brownies," *Parents.com*, Sept. 2005, available at <http://www.parents.com/recipes/cooking/family-favorites/spinach-brownies/>.
- (g) Darlene Godsell, "Brownies with Spinach," *Milwaukee Journal Sentinel*, Oct. 11, 1998, available at <http://www2.jsonline.com:80/alive/nutrition/1011savvy.stm>.

(h) "Brownies Made With Spinach," Madison Area Technical College, Oct. 3, 2002, available at <http://matcmadison.edu/culinary/Pages/Spinachbrownies.html>.

(i) "Sweet Potato and Goat Cheese Sandwich: move over, PB&J," Aug. 23, 2007, available at <http://www.spinachandhoney.com/2007/08/sweet-potato-and-goat-cheese-sandwich.html>.

(j) "Sweet Potato And Avocado Sandwich With Poppy Seed Spread," July 2000, available at <http://www.epicurious.com/recipes/food/prINTERfriendly/SWEET-POTATO-AND-AVOCADO-SANDWICH-WITH-POPPY-SEED-SPREAD-230165>.

(k) "Carrot French Toast," *Mr. Breakfast.com*, Mar. 18, 2004, available at <http://www.mrbreakfast.com/superdisplay.asp?recipeid=1211>.

(l) "Sweet Potato Walnut Waffles," Janice Newell Bissex and Liz Weiss, *The Mom's Guide to Meal Makeovers: Improving the Way Your Family Eats, One Meal at a Time!* (Broadway Books 2004).

(m) "Cauliflower Mac n Cheese," Feb. 3, 2004, available at <http://nofoodleftbehind.blogspot.com/2006/02/cauliflower-mac-n-cheese.html>.

(n) "Macaroni and Cheese That Might Not Kill You," Mar. 20, 2007, available at <http://cooking4theweek.blogspot.com/2007/03/macaroni-and-cheese-that-might-not-kill.html>.

(o) George Stella, "Cauliflower 'Mac' and Cheese Casserole," Food Network, 2006, *available at* http://www.foodnetwork.com/food/recipes/recipe/0,1977,FOOD_9936_29338,00.html.

(p) Annabel Karmel, "Tasty ground beef with sweet potatoes & tomatoes," *First Meals* (DK Publishing, Inc. 2004).

(q) Mary Kay Radnich, "North African Sweet Potato Meat Pie," *available at* <http://www.touregypt.net/recipes/recipeweek10132003.htm>.

(r) Nancy Dell'Aria, "Sweet Potato Lasagna," *Woman's Day*, Apr. 1, 2005, *available at* http://www.womansday.com/recipe/sweet_potato_lasagna-1355.html.

(s) Bridget Swinney, "Ten Tricky Ways to Get Your Kids to Eat Their Veggies," *Healthy Food for Healthy Kids*, Meadowbrook Press (1999).

(t) Chris Fisk, "Covert Cauliflower Mashed Potatoes," *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

(u) Chris Fisk, "Cauliflower And Potatoes Au Gratin," *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

(v) Henry Legere, "Vegetable Mashed Potatoes," *Raising Healthy Eaters: 100 Tips for Parents* (Da Capo Press 2004).

(w) "Veggie Mash," Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).

(x) Melissa Vaughan, "Chicken and Sweet Potato Croquettes," *Everyday with Rachael Ray*, Apr. 2007, available at <http://www.rachaelraymag.com/recipes/appetizer-side-dish-recipes/chicken-and-sweet-potato-croquettes/article.html>.

(y) Annabel Karmel, "Chicken, sweet potato, and pea puree," *SuperFoods for Babies and Children* (Atria Books 2006).

(z) "Morning Glory Muffins," Better Homes and Gardens, *Kid Favorites Made Healthy: 150 Delicious Recipes Kids Can't Resist!* (Meredith Books 2003).

(aa) Jane Kinderlehrer, "Carrot Orange Pecan Muffins," *Smart Muffins* (Newmarket Press 1987).

(bb) O. Robin Sweet and Dr. Thomas A. Bloom, "Bunny Muffins," *The Well-Fed Baby*, MacMillan (1994).

(cc) Deanna F. Cook, "Good Morning Muffins," *Disney's Family Cookbook* (Worzalla Publishing Co. 1996).

(dd) "Green Eggs and Ham," available at http://www.foodnetwork.com/food/recipes/recipe/0,,FOOD_9936_22416,00.html.

(ee) Sylvia J. Laviates, Mary E. McDonnell and William V.

Tamborlane, "Cream of Spinach with Soft-Cooked Eggs," *The Yale Guide to Children's Nutrition* (Yale University 1997).

(ff) Joohee Muromcew, "Spinach and Goat Cheese Scramble," *The*

Baby Bistro Cookbook (St. Martin's Press 2003).

19. Exhibit R summarizes the misrepresentations in Paragraph 33(v) of the First Amended Complaint.

20. Exhibit S contains true and correct copies of excerpts from the following works:

(a) Karin Knight and Jeannie Lumley, *1 2 3 Cook for Me: Over 300*

Quick, Easy, and Healthy Recipes for Babies and Toddlers (Fair Winds Press 2006).

(b) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The*

Complete Guide to Feeding Preschoolers (Mammoth Media Books 2001).

(c) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbook

Press 1999).

(d) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(e) "20 Ways to Raise a Veggie Lover," *Parents Magazine*, May 2006.

(f) Sandra K. Nissenberg, Margaret L. Bogle and Audrey C. Wright,

Quick Meals for Healthy Kids and Busy Parents (John Wiley & Sons, Inc. 1995).

21. Exhibit T contains true and correct copies of excerpts from the following works:

(a) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).

(b) Sylvia J. Lavietes, Mary E. McDonnell and William V. Tamborlane, *The Yale Guide to Children's Nutrition* (Yale University 1997).

(c) Harvey Karp, *The Happiest Toddler on the Block* (Bantam Dell 2004).

(d) Katherine Brooking, "Mission Nutrition: Eat Your Veggies!," September 13, 2006, available at <http://www.nymetroparents.com/newarticle.cfm?colid=7988>.

(e) Ann Cooper and Lisa M. Holmes, *Lunch Lessons: Changing the Way We Feed Our Children* (HarperCollins Publishers 2006).

(f) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbook Press 1999).

(g) Henry Legere, *Raising Healthy Eaters: 100 Tips for Parents* (Da Capo Press 2004).

22. Exhibit U contains true and correct copies of excerpts from the following works:

- (a) Joy Bauer, *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).
- (b) Jane E. Brody, *Jane Brody's Good Food Book: Living the High-Carbohydrate Way* (W.H. Norton & Company, Inc. 1985).
- (c) Alan D. Woolf, Howard C. Shane and Margaret A. Kenna, eds., *The Children's Hospital Guide to Your Child's Health and Development* (Perseus Publishing 2001).
- (d) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).
- (e) Dina Roth Port, "Moms' Best Feeding Tricks: How to Entice Even the Pickiest Eaters," *Parenting Magazine*, Feb. 2006.
- (f) Sarah Caron, "Sneaking Extra Nutrition into Family Meals," June 13, 2006, available at http://fitfare.net/2006/06/13/sneaking_extra_nutrition_into_family_meal/.

23. Exhibit V contains true and correct copies of excerpts from the following works:

- (a) Annabel Karmel, *Superfoods for Babies and Children* (Atria Books 2006).
- (b) Annabel Karmel, *The Healthy Baby Meal Planner* (Fireside 2005).

(c) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).

(d) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

(e) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

24. Exhibit W contains true and correct copies of excerpts from the following works:

(a) Kendra Van Wagner, "Who Was Erik Erikson?," *available at* <http://psychology.about.com/b/2006/09/18/who-was-erik-erikson.htm>.

(b) "What is Assisted Living," *available at* <http://www.hex2005.org/what-is-assisted-living.php>.

(c) "A Loving Deception by Margaret E. Johnson," *authorsden.com, available at* <http://www.authorsden.com/visit/viewwork.asp?AuthorID=142&id=10661>.

25. Exhibit X contains true and correct copies of excerpts from the following works:

(a) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).

(b) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).

(c) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

26. Exhibit Y contains true and correct copies of excerpts from the following works:

(a) Chris Fisk, *Sneaky Veggies: How to Get Vegetables Under the Radar & Into Your Family* (Sterling Publishing Co. 2006).

(b) Jane Kinderlehrer, *Confessions of a Sneaky Cook . . . or How to Make Your Family Healthy When They're Not Looking* (Rodale Press 1971).

(c) Karen Bali and Sally Child, *The Art of Hiding Vegetables: Sneaky Ways to Feed Your Children Healthy Food* (White Ladder Press 2005).

(d) "Hide and Go Sneak," *Food Network*, Aug. 11, 2004, available at http://www.foodnetwork.com/food/lf_kids/article/0,1904,FOOD_16382_3103342,00.htm.

(e) Marla Bazar Sochet, "25 Surprising Ways to Sneak More Fruits And Veggies Into Your Child's Diet," *Parents Magazine*, Vol. 75, Issue 7 (2000).

(f) Nava Atlas, "Getting Sneaky," *Vegetarian Times*, Nov./Dec. 2004.

(g) Dr. Janice Woolley and Jennifer Pugmire, *Food for Tots: The Complete Guide to Feeding Preschoolers* (Mammoth Media Books 2001).

(h) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbook Press 1999).

- (i) Joy Bauer, "The Sneaky Gourmet: 15 Ways to Disguise Vegetables," *The Complete Idiot's Guide to Total Nutrition* (MacMillan, Inc. 2d ed. 1999).
- (j) Vicki Lansky, *Feed Me I'm Yours* (Meadowbrook Press 1994).
- (k) Arlene Eisenberg, Heidi E. Murkoff and Sandee E. Hathaway, *What to Expect: The Toddler Years* (Workman Publishing Company, Inc. 1996).
- (l) Deanna F. Cook, *Disney's Family Cookbook* (Worzalla Publishing Co. 1996).
- (m) Melissa Clark, "Sneak It In: Sweet Potato," *Cookie Magazine*, Oct./Nov. 2006.
- (n) Melissa Clark, "Sneak It In: Squash," *Cookie Magazine*, July/Aug. 2006.
- (o) Undercover Vegetable Co., "Yotta Bar: Sneak More Veggies Into Your Diet!," *available at <http://www.undercoverveg.com/about.html>*.
- (p) Henry Legere, *Raising Healthy Eaters: 100 Tips for Parents* (Da Capo Press 2004).
- (q) Karin Knight and Jeannie Lumley, *1 2 3 Cook for Me: Over 300 Quick, Easy, and Healthy Recipes for Babies and Toddlers*, Fair Winds Press (2006).

(r) Sandra K. Nissenberg, Margaret L. Bogle and Audrey C. Wright, *Quick Meals for Healthy Kids and Busy Parents*, John Wiley & Sons, Inc. (1995).

(s) David Borgenicht and James Grace, *How to Con Your Kid: Simple Scams for Mealtime, Bedtime, Bathtime – Anytime!* (Quirk Productions, Inc. 2005).

(t) Katherine Brooking, "Mission Nutrition: Eat Your Veggies!," September 13, 2006, *available at* <http://www.nymetroparents.com/newarticle.cfm?colid=7988>.

(u) Janice Newell Bissex and Liz Weiss, *The Mom's Guide to Meal Makeovers: Improving the Way Your Family Eats, One Meal at a Time!* (Broadway Books 2004).

(v) Sylvia J. Lavietes, Mary E. McDonnell and William V. Tamborlane, *The Yale Guide to Children's Nutrition* (Yale University 1997).

(w) Annabel Karmel, *First Meals* (DK Publishing, Inc. 2004).

27. Exhibit Z contains true and correct copies of excerpts from the following works:

(a) Bridget Swinney, *Healthy Food for Healthy Kids* (Meadowbrook Press 1999).

(b) Domenica Catelli, *mom-a-licious* (Waterside Productions, Inc. 2007).

28. Exhibit AA is a true and correct copy of the Complaint, dated January 7, 2008.

29. Exhibit BB is a true and correct copy of Defendants' Answer to the Complaint, dated February 22, 2008.

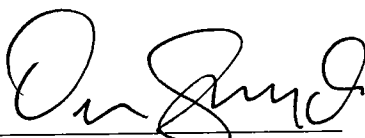
30. Exhibit CC is a true and correct copy of the Amended Complaint, dated April 17, 2008.

31. Exhibit DD contains true and correct copies of printouts from the United States Patent and Trademark Office TESS database regarding federal Trademark Applications Nos. 78676069, 77336128, 77315353 and 77254965 filed by plaintiff The Sneaky Chef, Inc.

32. Exhibit EE is a true and correct copy of an October 19, 2007 article in *The Wall Street Journal* entitled "How Another Seinfeld Scored Her Own Big Hit."

I hereby declare that the foregoing is true and correct to the best of my knowledge.

Executed on June 17, 2008.


Orin Snyder (OS-3122)

**EXHIBITS A-Z TO BE
SUBMITTED IN HARD COPY**

EXHIBIT AA

ORIGINAL

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Missy Chase Lapine and The Sneaky Chef, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MISSY CHASE LAPINE and THE SNEAKY
CHEF, INC.,

Plaintiffs,

- against -

JESSICA SEINFELD and JERRY SEINFELD,

Defendants.
-----X

COMPLAINT

Jury Trial Demanded

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2008 JUN -7 PM 3:13

Plaintiffs Missy Chase Lapine and The Sneaky Chef, Inc., by their attorneys Kasowitz, Benson, Torres & Friedman LLP, for their complaint against defendants Jessica Seinfeld and Jerry Seinfeld, allege as follows:

PRELIMINARY STATEMENT

1. This action for copyright and trademark infringement and defamation arises from conduct that gives new meaning to the terms "arrogance" and "greed." In April 2007, plaintiff Missy Chase Lapine, based on years of research, published The Sneaky Chef: Simple Strategies

for Hiding Healthy Foods in Kids' Favorite Meals (the "Book" or "The Sneaky Chef"). The Sneaky Chef achieved immediate critical acclaim and commercial success for its unique and innovative approach to improving children's eating habits by, among other things, camouflaging purees of carefully selected fruits and vegetables (like spinach and sweet potato) as ingredients in unhealthy foods desired by children, like cheeseburgers, grilled cheese sandwiches and brownies.

2. Six months later, defendant Jessica Seinfeld published Deceptively Delicious: Simple Secrets to Getting Your Kids Eating Good Food (the "Infringing Work" or "Deceptively Delicious"), which brazenly plagiarized The Sneaky Chef, even misappropriating the Book's trademark, a caricature of a winking chef holding a finger to her lips (as if to say "shhh") and hiding carrots behind her back. Fueled by a massive, celebrity-driven marketing campaign, Jessica Seinfeld's book became a commercial success, climbing to the top of The New York Times best seller list. That success, however, was accompanied by accusations on the Internet and in the media that, based on the striking and substantial similarities between the two books, Jessica Seinfeld had plagiarized The Sneaky Chef.

3. Seeking to deflect those accusations, and apparently not content that his wife had unlawfully misappropriated Lapine's book, Jerry Seinfeld, Jessica's husband, embarked on a national media campaign of malicious defamation against Lapine. On the Late Night With David Letterman show, Jerry Seinfeld stated, among other things, that his wife's book came out "at the same time" as Lapine's; that his wife "never saw" or "read" Lapine's book before hers was published; that Lapine was a "wacko" celebrity stalker who, like the infamous stalkers who had terrorized David Letterman and his family, "waited in the woodwork" to "spring out" and attack his wife with plagiarism charges; and that Lapine was an "angry and hysterical" woman who posed a potentially violent threat ("assassin") to the Seinfelds. Likewise, on E! News,

Seinfeld referred repeatedly to Lapine as a “nut job” who had “come[] out of the woodwork” to attack his wife with false accusations of plagiarism.

4. All of Jerry Seinfeld’s statements were false. Jessica Seinfeld’s book came out six months after Lapine’s; Jessica Seinfeld saw and read the Book before hers was published; Lapine does not suffer from any mental infirmity; she is not a celebrity stalker; she is not a violent or dangerous person; she did not and does not engage in extortion; she is not a liar; she did not, until the filing of this complaint, make any specific accusations against Jessica Seinfeld (although she had more than ample grounds to do so); she did not fabricate accusations against Jessica Seinfeld to gain media attention, enrich herself or harass the Seinfelds; and she was not lying in wait for an opportunity to become embroiled in a controversy with any celebrity -- much less the Seinfelds.

5. Jessica Seinfeld’s brazen plagiarism of Lapine’s book constitutes copyright and trademark infringement under federal and New York law. Jerry Seinfeld’s malicious, nationally-televised attack on Lapine constitutes slander under New York law. Jerry Seinfeld is an enormously wealthy and well-known comedian, and Jessica Seinfeld is his wife, but that does not give them license to slander and plagiarize. Accordingly, Lapine brings this action to recover compensatory and punitive damages.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b) and 15 U.S.C. § 1121, as well as the doctrine of pendent jurisdiction.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the claims arise, and defendants reside, in this district.

THE PARTIES

8. Plaintiff Missy Chase Lapine is a citizen of the State of New York and resides in Irvington, New York.

9. Plaintiff The Sneaky Chef, Inc. is a corporation organized and existing under the law of the State of New York, with its principal place of business in Irvington, New York.

10. Defendant Jessica Seinfeld is a citizen of the State of New York and resides in New York, New York.

11. Defendant Jerry Seinfeld is a citizen of the State of New York and resides in New York, New York. Jerry Seinfeld is an enormously wealthy and well-known comedian. From 1990 to 1998, he was the star of Seinfeld, one of the most popular programs in television history. He is married to defendant Jessica Seinfeld.

FACTS

Lapine Conceives of, Researches and Creates the Book

12. Lapine's professional work has focused on food, nutrition and health. She is the former publisher of Eating Well magazine and, before that, worked at Gourmet magazine. Lapine is certified in the master techniques of healthy cooking and was trained in classical cooking techniques by the Institute of Culinary Education. Lapine serves on the Culinary Arts Faculty of The New School in New York City; is a collaborator with the Alliance for a Healthier Generation, a partnership between the American Heart Association and the William J. Clinton Foundation devoted to helping schools serve healthier lunches; and serves on the Children's Advisory Council of Morgan Stanley Children's Hospital of New York-Presbyterian, where The Sneaky Chef nutrition techniques are used with pediatric patients.

13. In or about 2002, Lapine began researching methods for getting children to eat healthier foods. Lapine conducted numerous taste tests, focus groups and interviews, and consulted extensively with leading nutritionists, pediatricians and chefs. Her research resulted in an innovative solution: camouflage healthy foods so that children will eat them without realizing or objecting. Lapine developed original methods for combining ingredients, including specially-selected purees of vegetables that children typically resist, such as spinach or cauliflower, with dishes that children typically crave, such as brownies, pizza and pancakes.

14. Lapine then prepared a manuscript of the Book that set forth Lapine's views on nutrition, child-rearing and American eating habits, as well as her explanation of the purees and how to put her methods to use.

15. On or about February 6, 2006, Lapine sent a 139-page book proposal, which included extensive chapters from the Book manuscript, to HarperCollins Publishers, LLC ("HarperCollins"). Four days later, a representative from William Morrow, an imprint of HarperCollins, sent Lapine a letter rejecting the proposal. In or about early May 2006, Lapine, through her literary agent, again submitted to HarperCollins her book proposal, again including extensive chapters from the Book manuscript. On May 24, 2006, HarperCollins rejected Lapine's second proposal, stating that "the children's food segment of the market is a tough one to navigate during a particularly tough time in the cookbook category in general. The influence of the food network and the availability of recipes online have really hurt this area. I'm sorry to say we'll be passing . . ."

Lapine Publishes the Book and Obtains
Copyright and Trademark Protection

16. In or about June 2006, Perseus Books Group ("Perseus"), another book publisher, accepted Lapine's proposal for the Book. On or about August 1, 2006, Lapine and Perseus entered into a contract for publication of the Book. On or about April 2, 2007, Perseus, through its Running Press imprint, released the Book. The reviews were extremely positive, with the culinary press and general media lauding Lapine's revolutionary approach to disguising healthy foods inside children's favorite dishes. Within three weeks of publication, the Book became a New York Times best seller.

17. Lapine also has filed applications with the United States Copyright Office for copyright registration of the Book, and The Sneaky Chef, Inc. has filed applications with the United States Patent and Trademark Office for trademark registration of the word trademark "Sneaky Chef" and the image trademark that appears on and in the Book and on plaintiffs' Web site. The Sneaky Chef, Inc. is the co-owner with Lapine of all rights to the trademarks and is engaged, together with Lapine, in developing and marketing books, DVDs and other products that are based on Lapine's methods and concepts and utilize the trademarks.

18. As part of a campaign to market and promote the Book, Lapine appeared on the Today Show, Fox and Friends and numerous other television programs; appeared on numerous national and local radio programs; was featured in national magazines such as Parenting and Women's Day and in numerous newspapers; and did a book tour throughout the country, which included bookstore and supermarket appearances and signings.

Jessica Seinfeld Copies the Book, Notwithstanding a
Cease And Desist Demand from Lapine and Her Publisher

19. In or about May 2007, while promoting and marketing the Book, Lapine learned that Jessica Seinfeld and her publisher, HarperCollins, were planning to publish the Infringing Work. In an eight-page promotional brochure for the Infringing Work she received, Lapine observed blatant similarities between the Infringing Work, including, among other things, its cover design and content, and the Book. Lapine immediately brought these similarities to the attention of her publisher.

20. On or about July 9, 2007, seeking to prevent any violation of Lapine's rights, Running Press brought to the attention of Jessica Seinfeld's publisher the blatant similarities between the Book and the plans for the Infringing Work (including the cover art, the subtitles, the organization and the overall look and feel).

21. On or about July 31, 2007, Jessica Seinfeld's publisher sent Running Press a letter denying that Jessica Seinfeld copied, or was even influenced by, the Book, asserting that the Infringing Work was "entirely original to" Jessica Seinfeld, and stating that "we do not believe it necessary or appropriate to make any changes to the design or content of [the Infringing Work]."

22. The Infringing Work was published in October 2007, with only minor and insignificant modifications to the cover art and subtitle -- the cover design of the Infringing Work was slightly altered by moving the pictured carrots from their original position (held in the female chef's hand behind her back, exactly where the chef in The Sneaky Chef trademark holds her carrots) to a cutting board behind her back, and the Infringing Work's subtitle was slightly changed from "Sneaky Secrets to Get Your Kids Eating Good Food" to "Simple Secrets to Get Your Kids Eating Good Food."

Jessica Seinfeld Infringed Lapine's Copyright

23. In writing and publishing the Infringing Work -- which, in its content, artwork and overall look and feel, is substantially similar to the Book -- Jessica Seinfeld blatantly and willfully misappropriated the Book's original concept, expression, methodology, organization, structure, design, styling and look and feel.

24. Jessica Seinfeld's infringement consists of copying Lapine's copyrighted original expression, philosophy, premise, approach, explanations, discussions, reflections, organization, methodology and overall look and feel, including (without limitation) the following respects:

(a) Both the Book and the Infringing Work contain introductions written by doctors calling attention to the growing problem of obesity in American children and the difficulties inherent in providing sound nutrition to resistant children, and praising the author for creative, clever and convenient solutions for parents.

(b) Both the Book and the Infringing Work state that children need to feel a semblance of control over what they eat, while calling attention to the connection between good nutrition and how children behave and achieve. Both works discuss the dangers of too much sugar in a child's diet (e.g., the sugar high and ensuing crash). Both works address these issues by recommending camouflaging carefully-selected pureed healthy foods inside children's favorite foods.

(c) Both the Book and the Infringing Work begin with the author's personal anecdote of mealtime struggles with her own picky eaters. In fact, both works include a story about how one of the author's children is a picky eater who influenced a non-picky sibling to dislike food. Specifically, within that anecdote:

- the Book describes “*begging*, pleading, threatening, and bribing,” as well as “*coercing kids to eat* what’s on their plates.”
- the Infringing Work describes “*begging* my kids to eat vegetables,” as well as “*coerc[ing] them to eat* food they found disgusting.”

(d) Both the Book and the Infringing Work explain that the author is not a professional chef, just a mother who desires to have peace at the dinner table and to feed her children nutritious food. Both works discuss how the author overcame the guilt of tricking her kids into eating healthy food.

- The Book states that “this method has brought *peace to our family table*,” that “[i]n many families, the dinner table becomes a battleground and meal time is a *power struggle*,” and that “I couldn’t use logic, but I couldn’t afford to *give up* either.”
- The Infringing Work states: “I just wanted a little *peace around the dinner table*,” and continues, “I want my kids to associate food and mealtimes with happiness and conversations, not *power struggles* and strife.” The Infringing Work acknowledges, “[W]e just want to *give up*.”

(e) Both the Book and the Infringing work characterize the author’s solution as an “*epiphany*” and state the benefits that accompany nutritional camouflage.

- The Book explains: “There are many *foods that kids won’t go near* in their virgin condition, but after ten seconds in the blender, those same

broccoli stalks they made a face at yesterday are now eaten without a fight.”

- The Infringing Work explains: “I have become an expert at hiding vegetables purees and other healthful additional - *foods my kids wouldn't touch* otherwise - in all of their favorite dishes.”
- As an example, both the Book and the Infringing Work advocate allowing children to put *sprinkles* on their food to enhance its appeal.

(f) Both the Book and the Infringing Work discuss how the author succeeded in hiding “good-for-you” foods in the dishes that kids naturally love, and how the author’s family is now happier.

- The Book states: “It got our *whole family* eating together in peace.”
- The Infringing states: “[T]he *whole family* is happier and we can finally enjoy mealtimes again.”

(g) Both the Book and the Infringing Work address arguments against “sneaking” vegetables into children’s dishes and then systematically refute each one.

- The Book likens the practice to a form of “*loving deceit*.”
- The Infringing Work likens the practice to a form of “[*l*oving [*d*]eception.”

(h) Both the Book and the Infringing Work state that forbidden foods are more alluring to children and suggest that, for that reason, foods such as candy should not be forbidden.

(i) Both the Book and the Infringing Work provide explanatory passages at the beginning of the work regarding nutrition and directions for the creation and use of the purees, with the latter portion of the work discussing the use of the purees.

(j) The Book, on its cover, spine and first page, uses the caricature of a chef, winking, holding a finger to her lips as if saying “shhh” and hiding carrots behind her back, as well as repeatedly using a drawing of a carrot wearing sunglasses making the same “shhh” gesture. In a substantially similar way, the cover of the Infringing Work uses a caricature of Jessica Seinfeld as a chef, winking, with carrots on a cutting board behind her back, as well as repeatedly using, including on its spine, first page and insert, a drawing of Jessica Seinfeld holding a finger to her lips as if saying “shhh.”

(k) The subtitle of the Book, “Simple Strategies for Hiding Healthy Foods in Kids’ Favorite Meals,” is substantially similar to the subtitle of the Infringing Work, “Simple Secrets to Get your Kids Eating Good Food.”

(l) In both the Book and the Infringing Work, each recipe is printed on a page with a border around the text. In the Book, the border is a straight-line box; in the Infringing Work, the border is a wavy-line box.

(m) Both the Book and the Infringing Work use line-drawn, cartoon graphics, except when showing dishes made according to recipes, they use full-color photographs.

(n) Both the Book and the Infringing Work include icons with each recipe. The Book uses icons that represent the particular sneaky method used; the Infringing Work uses icons that represent the particular fruits and vegetables used.

(o) Both the Book and the Infringing Work, in setting forth the use of purees, use a different font color for purees from the color used for the other ingredients.

(p) Both the Book and the Infringing Work suggest the same approach to cooking healthy food for children -- get the right tools (e.g., a small food processor), get the “*staple*” foods, make the vegetable and fruit purees once a week and refrigerate or freeze them, and then, at meal time, make the recipes using the purees to inject healthy foods into the dishes.

(q) Both the Book and the Infringing Work next set forth the staples of a well-stocked kitchen, including a list of which foods children will most often and least often eat without a fight.

(r) Both the Book and the Infringing Work recommend *steaming* the vegetables, pureeing them in a *food processor*, *packaging* them in *1/4 cup baggies*, and then *freezing* them for later use.

- The Book states: “[Y]ou will find the Make-Ahead . . . are your best friends . . . once you have these purees and blends in your refrigerator or freezer, *simply grab a spoonful and mix it into the recipes as called for.*” The Book claims that with respect to “. . . the scratch recipes, you’ll spend *less than thirty minutes* for each one.”
- The Infringing Work states: “You will quickly learn to prepare, cook, puree, and portion the purees. Then the *purees will be available to use when they’re called for*, just like any other ingredient in my recipes.”

The Infringing Work claims that “. . . the recipes . . . are doable in *thirty minutes or less* . . .”

(s) Both the Book and the Infringing Work talk about “*sneak*[ing]” the purees into typical kid food to remove “stress.” The Book calls this being “*sneaky*,” and the Infringing Work refers to it as the “*sneak it in*” technique.

- The Book states: “[*P*]arental *control* does not have to come in the form of a *constant battle*.”
- The Infringing Work states: “It empowers you to exert some legitimate *control* over what your children eat, without inviting the *usual fights*.”

(t) Both the Book and the Infringing Work also provide suggestions for and explanations of how purees can be incorporated into pre-packaged, store-bought foods.

(u) Both the Book and the Infringing Work implore the reader to enthusiastically test the purees and recipes.

- The Book states, “[*L*]et’s put these clever methods into *action*”
- The Infringing Work states, “[*Y*]ou’re *ready for action*.”

(v) Both the Book and the Infringing Work suggest adding the same specific fruit or vegetable puree to the same dishes, as set forth below:

<u>Children’s Dish</u>	<u>Hidden Puree Used in the Book</u>	<u>Hidden Puree Used in the Infringing Work</u>
Chocolate Pudding	Avocado	Avocado

Chocolate Chip Cookies	White Bean	White Bean
Brownies	Spinach	Spinach
Grilled Cheese	Sweet Potato	Sweet Potato
French Toast	Sweet Potato/Carrot	Sweet Potato/Carrot
Mac 'n Cheese	Cauliflower	Cauliflower
Meat Sauce/Bolognese	Sweet Potato	Sweet Potato
Twice-Baked Potatoes	Cauliflower	Cauliflower
Chicken Tenders	Sweet Potato	Sweet Potato
Peanut Butter and Jelly Muffins	Carrot	Carrot
Green Eggs	Spinach	Spinach

To Deflect Attention From His Wife's Infringement,
Jerry Seinfeld Defames Lapine on National Television

25. Upon release of the Infringing Work in early October 2007, Jessica Seinfeld launched a national promotional campaign, appearing on such popular television programs as The Oprah Winfrey Show and Live with Regis and Kelly. The Infringing Work received favorable reviews and became a best seller.

26. In light of the substantial similarity between the Book and the Infringing Work, within weeks of publication of the Infringing Work, numerous statements were made on the Internet and in print and television media that Jessica Seinfeld had plagiarized the Book.

27. On October 29, 2007, to deflect attention from the mounting public accusations of plagiarism against his wife, defendant Jerry Seinfeld used an appearance on the immensely

popular CBS television program, Late Show With David Letterman, to launch a malicious, premeditated and knowingly false and defamatory attack, uttering egregiously false and reprehensible statements about Lapine.

28. In that appearance, Jerry Seinfeld stated that Lapine was a mentally unbalanced celebrity stalker who falsely concocted accusations of plagiarism to thrust herself into the limelight and harass the Seinfelds. Jerry Seinfeld stated that Lapine was an "angry" and "hysterical" "wacko" who had been "waiting in the woodwork" to "spring out" and "go wacko" on the Seinfelds. Seinfeld stated that Lapine was similar to the "wackos" who had victimized Letterman in two widely publicized and harrowing episodes several years ago. To bring home the point that Lapine was a mentally unhinged stalker of the Seinfelds, Jerry Seinfeld further suggested that Lapine could be an "assassin."

29. Seinfeld's slanderous attack on Lapine included, among others, the following statements uttered before a national television audience.

David Letterman: And speaking of mother, the mother of your child, uh, children, your wife, big cookbook, congratulations on the cookbook.

Jerry Seinfeld: Thank you very much, yes, my wife has a very big cookbook, but --

Letterman: What's the name of the cookbook?

Seinfeld: -- the cookbook is called, uh, *Deceptively Delicious*, but there is a cookbook controversy, now you know --

Letterman: What do you mean?

Seinfeld: -- I don't like to come on the show without some controversy brewing, where I can inject myself --

* * *

Seinfeld: So, um, now my wife likes to cook, so she comes up with this thing where she's pureeing vegetables and she's putting them in the kid's food, and the kids, so they get like better nutrition, and she's doing this and then her friends start doing it, and then she has two sisters and they have kids, and they start doing it. So they're passing all these recipes around. So somebody says to her, you should put these recipes into a cookbook, make a cookbook.

Letterman: Right. Excellent idea.

Seinfeld: Because it's healthy and we, the fat kids and the obesity, and it's a positive, positive thing.

Letterman: It's a serious problem. Sure.

Seinfeld: So she makes the cookbook, everybody is happy, it does well, seemingly an innocent sequence of events.

Letterman: Mmm.

Seinfeld: *Now you know, having a career in show business, one of the fun facts of celebrity life is, wackos will wait in the woodwork to pop out at certain moments of your life to inject a little adrenalin into your life experience.*

Letterman: Yes, just a little tap to get your attention.

Seinfeld: *Yes, I have wackos, you have had wackos. I believe your wackos are very well documented.*

Letterman: Heh, yeah. Uh, yes. That's one good thing. You got all the paperwork.

Seinfeld: *Now, if you're any good as a woodwork wacko, you are patient. You wait. You pick your moment and then you spring out and go wacko. So, there's another woman who had another cookbook. And it was a similar kind of thing with the food, and the vegetables in the food, and uh, my wife never saw the book, read the book, used the book.*

Letterman: Knew nothing about it.

Seinfeld: Didn't know anything about it. *But the books came out at the same time.*

Letterman: Mm hmm.

Seinfeld: *So this woman says, "I sense this could be my wacko moment."*

Letterman: Ahhh. Oh.

Seinfeld: *So she comes out and she says, and she accuses my wife, she says, you stole my mushed-up carrots. You can't put mushed-up carrots in a casserole, I put mushed-up carrots in the casserole. It's vegetable plagiarism.*

Letterman: It's ridiculous.

* * *

Letterman: And what does this woman think, that she's the first one to prepare and eat food?

Seinfeld: *I, I guess so. And I'm more upset, we're sorry that she is, you know, angry and hysterical, and because she's a three-name woman, which is what concerns me. She has three names.*

Letterman: Oh, mmm.

Seinfeld: *And you know, if you read history, many of the three-name people do become assassins.*

Letterman: Yeah, yeah. Now, um --

Seinfeld: *Mark David Chapman. And you know, James Earl Ray. So, that's my concern.*

30. Jerry Seinfeld's statements on the Letterman program stated, expressly and by inference, implication and insinuation, that Lapine is a mentally unhinged celebrity stalker who poses a potentially violent threat to the Seinfelds, and that she falsely concocted accusations of plagiarism against Jessica Seinfeld. A reasonable person watching Jerry Seinfeld on the Letterman program necessarily would conclude that Jerry Seinfeld had imputed to Lapine mental illness and potentially violent or, at a minimum, hostile, tendencies, proclivities and activities.

31. For example, when Jerry Seinfeld told Letterman, ***"I have wackos, you have had wackos. I believe your wackos are very well documented,"*** Seinfeld was referring to two stalking episodes involving Letterman that received extensive national press coverage. One such episode, which occurred in the late 1990s, involved Margaret Mary Ray, a woman diagnosed with schizophrenia who repeatedly broke into Letterman's home. The other widely-publicized episode involved a 2005 plot to kidnap Letterman's infant son and hold him hostage for a \$5 million ransom.

32. On the same day he appeared on Late Show With David Letterman, Jerry Seinfeld also appeared on E! News, broadcast on the E! network. Seinfeld used his appearance on that program again to make outrageously false statements about Lapine's mental health, stating that she was a "nutjob" who had seized upon the cookbook controversy to extort money from the Seinfelds:

Host: Your wife has done such great philanthropy work over the years, especially with children. There's lots of controversy now around her book. Is she unfairly being criticized? That's right. Yeah, exactly. And what does this woman think, that she's the first one to prepare and eat food?

Seinfeld: ***As a celebrity, I enjoy the fact that whenever you do something; some nut job comes out of the woodwork and gets hysterical. I know the truth that nothing ever happened. I don't know if you know the story about the guy I went to college with who claimed I stole the whole TV series from him, and he sued me for 100 million dollars. So this woman is another kind of nut. You know, she thinks she invented vegetables. And she's accusing my wife of stealing her mashed-up carrots.***

33. Jerry Seinfeld's statements on the E! News program stated, expressly and by inference, implication and insinuation, that Lapine is a mentally unhinged celebrity stalker who seized upon the cookbook controversy to concoct false accusations of copying to extort money from the Seinfelds. A reasonable person watching Jerry Seinfeld on E! News necessarily would

conclude that he, directly and by implication, had imputed to Lapine mental illness and a tendency and proclivity to lie and extort.

34. The statements uttered by Jerry Seinfeld about Lapine, as described above, are entirely false. Lapine does not suffer from any mental infirmity; she is not a celebrity stalker; she is not a violent or dangerous person; she did not and does not engage in extortion; she is not a liar; she did not, until the filing of this complaint, make any specific accusations against Jessica Seinfeld (although she had more than ample grounds to do so); she did not fabricate accusations against Jessica Seinfeld to gain media attention, enrich herself or harass the Seinfelds; and she was not lying in wait for an opportunity to become embroiled in a controversy with any celebrity -- much less the Seinfelds.

35. Lapine is not a public figure, but even if Lapine were to be considered a public figure for the purposes of her defamation cause of action, Jerry Seinfeld knew or recklessly disregarded that his defamatory statements about Lapine were false.

36. Jerry Seinfeld's defamatory statements about Lapine have caused and are continuing to cause Lapine severe damage.

First Claim for Relief
On Behalf of Plaintiff Missy Chase Lapine

(Copyright Infringement under 17 U.S.C. §§ 101 et seq. --
Against Defendant Jessica Seinfeld)

37. Plaintiff Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 36.

38. The Book contains a substantial amount of material wholly original with Lapine and copyrightable subject matter under the laws of the United States. The expression, presentation, arrangement, structure and organization of the Book's content, as well as the Book's explanations, descriptions, phrases, philosophies, recipes, "sneaky tips," methods, solutions, premise, styling and designs were the result of Lapine's original, creative and independent authorial judgment. The Book's components are expressed by Lapine in a sequence, order, arrangement, organization and structure selected by, and original to, Lapine.

39. Since February 2006, Lapine has been, and is, the sole proprietor of all right, title, and interest in and to the copyright in the Book.

40. At all times relevant hereto, all copies of the Book made by Lapine or under her authority or license in the United States and elsewhere have been printed in strict conformity with the Copyright Act of the United States and all other laws governing copyright in the areas where the Book has been published.

41. Lapine has conveyed no copyright interest in the Book or any edition thereof to HarperCollins or Jessica Seinfeld.

42. Defendant Jessica Seinfeld incorporated Lapine's original expression, arrangement, presentation, structure, methods, phrases, philosophies, designs, styling, descriptions, organization, structure, premise, and recipes, incorporating significant elements of the Book's copyrightable, original expression into the Infringing Work.

43. As a result of defendant Jessica Seinfeld's infringement of Lapine's copyright, the Infringing Work and the Book, are substantially similar.

44. Jessica Seinfeld has earned revenues from producing, promoting, distributing and otherwise exploiting the Infringing Work.

45. Jessica Seinfeld, with knowledge of Lapine's ownership of the copyright in the Book, willfully infringed Lapine's rights by producing, promoting, distributing and otherwise exploiting the Infringing Work.

46. As a direct and proximate result of Jessica Seinfeld's conduct, Lapine has been damaged in an amount to be determined at trial.

Second Claim for Relief
On Behalf of Both Plaintiffs

(Trademark Infringement under Lanham Act §§ 32 and 43(a) --
Against Defendant Jessica Seinfeld)

47. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 36.

48. Plaintiffs are the sole proprietors of all right, title and interest in The Sneaky Chef word and image trademarks.

49. Lapine first used The Sneaky Chef word and image trademarks in commerce in connection with her business in or about February 2007. The image trademark contains a line-

drawn caricature image of a female chef winking, holding a finger to her lips as if to say “shhh,” and hiding carrots behind her back.

50. Subsequently, Lapine initiated the registration process for both the “Sneaky Chef” word trademark and the above-described image trademark. On December 25, 2007, the United States Patent and Trademark office issued Lapine Registration No. 3360525 related to the word trademark. Additional registration applications: Serial No. 77315353, as related to the word trademark, and Serial Nos. 77254965 and 77336128, as related to the image trademark, are pending.

51. By virtue of the Book’s sales and promotion, as well as the distinctive appearance and nature of The Sneaky Chef word and image trademarks, the trademarks have acquired a secondary meaning attributable to plaintiffs. Lapine’s education, expertise and years of effort in improving the diets and health of American children and the culinary arts have contributed to the credibility and goodwill fostered in the trademarks.

52. Jessica Seinfeld (who has no education, expertise or experience concerning children’s nutrition or culinary arts) has, in bad faith, adopted a confusingly similar mark, making use, on the Infringing Work’s cover, of a line-drawn caricature of a female chef preparing food, winking, while hiding carrots behind her back. An additional image appears on the spine of the Infringing Work and on Jessica Seinfeld’s Web site containing a line-drawn image of a female holding a finger to her lips as if to say “shhh.”

53. The above-described elements of the Infringing Work are designed and conceived to mislead the public into associating the Infringing Work with the Book, and are likely to cause consumer confusion, initial interest confusion, mistake and deception of the public as to the

identity and origin of plaintiffs' goods, and as to any affiliation or relationship between the two works and parties, causing irreparable harm to plaintiffs.

54. The Infringing Work has been advertised, sold and distributed in interstate commerce.

55. As a direct and proximate result of Jessica Seinfeld's conduct, plaintiffs have been damaged in an amount to be determined at trial.

Third Claim for Relief
On Behalf of Both Plaintiffs

(Trademark Infringement under N.Y. Gen. Bus. Law § 360-k --
Against Defendant Jessica Seinfeld)

56. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 36 and 48 through 53.

57. Jessica Seinfeld has used and continues to use, without plaintiffs' consent, a colorable imitation of The Sneaky Chef trademark in connection with the sale, distribution, offering for sale, or advertising of the Infringing Work.

58. Jessica Seinfeld's improper and bad-faith use of a confusingly similar mark is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services.

59. Jessica Seinfeld intended to cause confusion or mistake or to deceive as to the source of origin of such goods or services.

60. As a direct and proximate result of Jessica Seinfeld's conduct, plaintiffs have been damaged in an amount to be determined at trial.

Fourth Claim for Relief
On Behalf of Both Plaintiffs

(Injury to Business Reputation under N.Y. Gen. Bus. Law § 360-l --
Against Defendant Jessica Seinfeld)

61. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 36, 48 through 53 and 57 through 59.

62. Jessica Seinfeld's use of a confusingly similar trademark injures and creates a likelihood of injury to plaintiffs' business reputation because persons encountering Jessica Seinfeld and her products and services will believe that Jessica Seinfeld is affiliated with or related to or has the approval of plaintiffs.

63. Any adverse reaction by the public to Jessica Seinfeld and the quality of her products and the nature of her business will injure the business reputation of plaintiffs and the goodwill that they enjoy in connection with The Sneaky Chef trademark, goods and services.

64. As a direct and proximate result of Jessica Seinfeld's conduct, plaintiffs have been damaged in an amount to be determined at trial.

Fifth Claim for Relief
On Behalf of Plaintiff Missy Chase Lapine

(Slander and Slander Per Se --
Against Defendant Jerry Seinfeld)

65. Plaintiff Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 36.

66. Jerry Seinfeld's false statements about Lapine constitute slander and/or slander per se.

67. Jerry Seinfeld's false and defamatory statements were made with malice, as such statements were made by Jerry Seinfeld with knowledge of their falsity or with reckless disregard for their falsity.

68. As a proximate result of Jerry Seinfeld's false and defamatory statements, Lapine has suffered injury, including pecuniary loss, in an amount to be determined at trial.

69. Because Jerry Seinfeld's made his false and defamatory statements described above knowingly, willfully, maliciously and in conscious disregard of Lapine's rights, Lapine is entitled to an award of punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that judgment be entered:

(1) On the First Claim for Relief, against defendant Jessica Seinfeld and in favor of Plaintiff Missy Chase Lapine:

(a) awarding, pursuant to 17 U.S.C. § 504(b), actual damages and disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means; and

(b) awarding, pursuant to 17 U.S.C. § 504(c), statutory damages;

(2) On the Second Claim for Relief, against defendant Jessica Seinfeld and in favor of plaintiff Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to § 35 of the

Lanham Act, 15 U.S.C §§ 1117(a) damages, as well as disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means;

(3) On the Third Claim for Relief, against defendant Jessica Seinfeld and in favor of plaintiffs Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to N.Y Gen. Bus. Law § 360-m, actual damages and disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means; as well as multiple damages in the amount of three times the damages suffered by plaintiffs, pursuant to N.Y Gen. Bus. Law § 360-m;

(4) On the Fourth Claim for Relief, against defendant Jessica Seinfeld and in favor of plaintiffs Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to N.Y Gen. Bus. Law § 360-m, actual damages and disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means; as well as multiple damages in the amount of three times the damages suffered by plaintiffs, pursuant to N.Y Gen. Bus. Law § 360-m;

(5) On the Fifth Claim for Relief, against defendant Jerry Seinfeld and in favor of plaintiff Missy Chase Lapine, awarding compensatory and punitive damages in amounts to be determined at trial;

(6) Awarding plaintiffs their costs, expenses, interest and reasonable attorneys' fees;

(7) Granting such other and further relief as this Court deems just and proper.

Dated: January 7, 2008
New York, New York

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EXHIBIT BB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MISSY CHASE LAPINE and THE SNEAKY CHEF, INC.,	:	
Plaintiffs,	:	ECF Case
-against-	:	No. 08-CV-128 (LTS)
JESSICA SEINFELD and JERRY SEINFELD,	:	ANSWER OF DEFENDANTS
Defendants.	:	JESSICA SEINFELD and
	:	JERRY SEINFELD
	:	

-----X

Defendants Jessica Seinfeld and Jerry Seinfeld, by their attorneys Cowan, Liebowitz & Latman, P.C. and Menaker & Herrmann LLP, denying the allegations of the Complaint for copyright infringement, trademark infringement, injury to business reputation and slander, for their answer to the Complaint state as follows:

1. State that this action gives new meaning to the terms “objectively unreasonable” and “publicity stunt.” Admit that Plaintiff Lapine’s book *The Sneaky Chef: Simple Strategies for Hiding Healthy Foods in Kids’ Favorite Meals* (“*Sneaky Chef*”) was first published in paperback in April 2007. Deny that *Sneaky Chef* reflects a “unique and innovative approach to improving children’s eating habits.” Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1.

2. Admit that Defendant Jessica Seinfeld’s book *Deceptively Delicious: Simple Secrets to Getting Your Kids Eating Good Food* (“*Deceptively Delicious*”) was published on or about October 5, 2007, and became a commercial success, in late October 2007 reaching

Number 1 on the hardcover New York Times Advice, How-To and Miscellaneous list. Deny the remaining allegations in paragraph 2.

3. Deny the allegations in paragraph 3, except admit that on or about October 29, 2007, Jerry Seinfeld appeared on *The Late Show With David Letterman* and refer to the transcript of that show for what was said.

4. Deny the allegations in paragraph 4, and state that anyone hearing Jerry Seinfeld's remarks concerning the allegations of "vegetable plagiarism" would readily have recognized that he was not making statements of fact but overstatements of opinion for comic effect.

5. Admit that Jerry Seinfeld is a well-known comedian, and that Jessica Seinfeld is his wife. Deny the remaining allegations in paragraph 5.

6. Do not contest this Court's jurisdiction, as alleged in paragraph 6.

7. Do not contest this Court's venue, as alleged in paragraph 7.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Admit the allegations in paragraph 10.

11. Admit the allegations in paragraph 11.

12. Admit the allegations in paragraph 12.

13. Deny that “camouflag[ing] healthy foods so that children will eat them without realizing or objecting” is “original” to Lapine. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 13.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. Admit that in or about late May 2006 an approximately 100-page proposal was submitted to HarperCollins and was rejected. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17.

18. Admit the allegations in paragraph 18.

19. Deny the allegations in paragraph 19.

20. Admit that in July 2007 a representative of Running Press contacted HarperCollins. Deny the remaining allegations in paragraph 20.

21. Admit the allegations in paragraph 21, and state that the letter referred to, which speaks for itself, states in addition to the language quoted by Plaintiffs, “Any similarities between the two books stem from their shared subject matter. ... The idea of sneaking healthy foods into a child’s diet is not original to your author (see, for example, the monthly column in COOKIE Magazine titled ‘Sneak It In’), nor is the concept of creating purees in order to do so. Beyond this basic idea – which, of course, is not protected by copyright law – the books differ

greatly. I simply do not agree that they are similar in terms of style, design, organization or 'look and feel.'"

22. Admit that *Deceptively Delicious* was published in October 2007 with the subtitle "Simple Secrets to Get Your Kids Eating Good Food." Deny the remaining allegations in paragraph 22.

23. Deny the allegations in paragraph 23. Respectfully refer the Court to the books, which speak for themselves; and state that the "content," "artwork," "expression," "methodology," "organization" and "structure" of *Deceptively Delicious* are substantially dissimilar to, and its "design, styling and look and feel" are strikingly different from, *Sneaky Chef* as a matter of law.

24. Deny that Jessica Seinfeld has "infringed," and deny that anything in *Deceptively Delicious* is "copied" from *Sneaky Chef*. Deny that such matter as "concept," "philosophy," "premise," "approach," and "methodology" is protectible by copyright. 17 U.S.C. § 102(b).

As to the specific allegations in subparagraphs (a)-(v) of the Complaint, respectfully refer the Court to the parties' books, which speak for themselves, and which are quoted or characterized incorrectly and/or out of context in subparagraphs (a)-(v) of the Complaint. Plaintiffs' allegations of actionable similarity under the federal Copyright Act in subparagraphs (a)-(v) consist largely of citations of paired short passages of text that are in every case substantially dissimilar as to expression, with only scattered words or word fragments in common; for the most part even the unprotectible ideas expressed are dissimilar. Even the unprotectible words and word fragments Plaintiffs emphasize (e.g., "*table*") are commonplace, even inevitable, in works with similar subject matter, i.e., cookbooks and books about childhood nutrition.

Worse yet, the purported “quotations”—tellingly, Plaintiffs provide no page numbers for the passages purportedly quoted or characterized—that make up Plaintiffs’ copyright infringement claim are riddled with inaccuracies, and some are manufactured entirely.

For example, subparagraph 24(e) of the Complaint alleges “Both the Book and the Infringing work characterize the author’s solution as an ‘*epiphany*’ and state the benefits that accompany nutritional camouflage.” (emphasis in Complaint). The allegation in subparagraph 24(e) is (A) false, for neither book characterizes anything as an “epiphany”; and (B) irrelevant, for neither Lapine nor anyone else could claim an exclusive right under copyright to “characterize the author’s solution as an ‘*epiphany*’ and state the benefits that accompany nutritional camouflage.”

Subparagraph 24(f) alleges “The Book states: ‘It got our *whole family* eating together in peace.’”; and “The Infringing [sic] states: ‘[T]he *whole family* is happier and we can finally enjoy mealtimes again.’” (emphasis in Complaint). The claim is frivolous on its face; the cited sentences are substantially dissimilar, having only the two-word phrase “whole family” in common. It is also falsified. The italicized, boldfaced phrase “whole family” (*Deceptively Delicious*, p.11) allegedly copied from *Sneaky Chef* does not even appear in *Sneaky Chef*, which states, at page 28, “It got our family eating together in peace.”

Subparagraph 24(v) of the Complaint alleges that “Both the Book and the Infringing Work suggest adding the same specific fruit or vegetable puree to the same dishes, as set forth below.” Lapine’s claim to own a copyright in the suggested use of a single ingredient—in recipes which are themselves uncopyrightable—is frivolous on its face. Even worse, Lapine’s specific representations to the Court in subparagraph 24(v) misrepresent and outright falsify the works at issue. A few examples:

- Plaintiffs claim copyright infringement based on both books' allegedly "suggesting" adding "White Bean" puree to "Chocolate Chip Cookies." The claim is frivolous and false. *Sneaky Chef*, pp.236-37, specifies "White Bean Puree" (pureed "great northern, navy, butter or cannelloni" beans, *id.* p.112) for its "Unbelievable Chocolate Chip Cookies"; however, *Deceptively Delicious*'s "Chocolate Chip Cookies" recipe, p.177, specifies canned chickpeas—and not pureed, but "drained and rinsed."
- Plaintiffs represent to the Court that both books "suggest" adding "Cauliflower" puree to "Twice-Baked Potatoes." *Sneaky Chef*, however, does not even contain a recipe for twice-baked potatoes—a fact clearly within Plaintiffs' knowledge. Two potato recipes in *Sneaky Chef* ("No Sin Potato Skins," p.184, and "Mystery Mashed Potatoes," p.228) specify not "Cauliflower" but "White Puree" (made of zucchini, cauliflower and lemon juice, *id.* pp.102-03). Another, "Triple-Stuffed Potatoes," p.194-95, specifies either "White Puree" or "White Bean Puree" (i.e., "great northern, navy, butter or cannelloni" beans, *id.* p.112). *Deceptively Delicious* specifies "cauliflower puree" in its "Twice Baked Potatoes" recipe, p.139.

Claiming copyright infringement based on trivial and unprotectible aspects of Plaintiffs' work is objectively unreasonable. Falsifying and misrepresenting both parties' works in the process is inexcusable. Such allegations and contentions, which are both false and without evidentiary support in the only place such support could be found—the works themselves—are irresponsible and indeed sanctionable under 17 U.S.C. § 505 and Fed. R. Civ. P. 11(b). Even as manufactured, misquoted and presented out of context they reflect no actual copying, much less actionable copying. Deny the remaining allegations in paragraph 24.

25. Deny that *Deceptively Delicious* is an “Infringing Work.” Deny that Jessica Seinfeld “launched” a national promotional campaign. Admit the remaining allegations in paragraph 25.

26. Deny the allegations in paragraph 26.

27. Deny the allegations in paragraph 27, except admit that Jerry Seinfeld appeared on *The Late Show With David Letterman* on or about October 29, 2007.

28. Deny the allegations in paragraph 28 and refer to the transcript of the show for what was said.

29. Deny the allegations in paragraph 29, except admit that Jerry Seinfeld made overstatements of opinion for comic effect, and refer to the complete transcript of the show for what was said.

30. Deny the allegations in paragraph 30.

31. Deny the allegations in paragraph 31, except admit that Jerry Seinfeld made comic remarks about both his and David Letterman’s experiences with individuals whose actions impinged on their off-camera lives.

32. Deny the allegations in paragraph 32.

33. Deny the allegations in paragraph 33.

34. Deny the allegations in paragraph 34, except admit that Jerry Seinfeld made overstatements of opinion for comic effect.

35. Deny the allegations in paragraph 35.

36. Deny the allegations in paragraph 36.

**As to Plaintiff Missy Chase Lapine's First Claim for
Relief (Alleged Copyright Infringement Under the
Copyright Act, 17 U.S.C. § 101 *et seq.*)**

- 37. Repeat paragraphs 1 through 36 of this Answer.
- 38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38.
- 39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39.
- 40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.
- 41. Admit the allegations in paragraph 41.
- 42. Deny the allegations in paragraph 42.
- 43. Deny the allegations in paragraph 43.
- 44. Deny that *Deceptively Delicious* is an "Infringing Work." Admit that Jessica Seinfeld has received royalties from sales of *Deceptively Delicious*. Deny the remaining allegations in paragraph 44.
- 45. Deny the allegations in paragraph 45.
- 46. Deny the allegations in paragraph 46.

**As to Plaintiffs' Second Claim for Relief (Alleged
Trademark Infringement Under Lanham Act §§ 32 and
43(a), 15 U.S.C. §§ 1114, 1125)**

- 47. Repeat paragraphs 1 through 36 of this Answer.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48.

49. State that Plaintiffs' alleged "image trademark" speaks for itself. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 49.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

51. Deny the allegations in paragraph 51.

52. Deny the allegations in paragraph 52.

53. Deny the allegations in paragraph 53.

54. Deny that *Deceptively Delicious* is an "Infringing Work." Admit the remaining allegations in paragraph 54.

55. Deny the allegations in paragraph 55.

**As to Plaintiffs' Third Claim for Relief (Alleged
Trademark Infringement Under N.Y. Gen. Bus. Law
§ 360-k)**

56. Repeat paragraphs 1 through 36 and 48 through 53 of this Answer.

57. Deny the allegations in paragraph 57.

58. Deny the allegations in paragraph 58.

59. Deny the allegations in paragraph 59.

60. Deny the allegations in paragraph 60.

**As to Plaintiffs' Fourth Claim for Relief (Alleged Injury
to Business Reputation/Dilution Under N.Y. Gen. Bus.
Law § 360-1)**

61. Repeat paragraphs 1 through 36, 48 through 53, and 57 through 59 of this Answer.

62. Deny the allegations in paragraph 62.

63. Deny the allegations in paragraph 63.

64. Deny the allegations in paragraph 64.

**As to Plaintiff Missy Chase Lapine's Fifth Claim for
Relief (Alleged Slander and Slander *Per Se*)**

65. Repeat paragraphs 1 through 36 of this Answer.

66. Deny the allegations in paragraph 66.

67. Deny the allegations in paragraph 67.

68. Deny the allegations in paragraph 68.

69. Deny the allegations in paragraph 69.

As to the Relief Demanded

70. Plaintiffs are not entitled to any of the relief demanded.

Affirmative and Other Defenses

71. The Complaint (and each of its claims) fails to state a claim on which relief can be granted.

72. Defendant Jessica Seinfeld's original work *Deceptively Delicious* was independently created.

73. Defendant Jessica Seinfeld's original work *Deceptively Delicious* is not similar, let alone "substantially similar," to Plaintiffs' work *Sneaky Chef*, and does not copy from it or take any protected or copyrightable expression from it.

74. Although no use was made of Plaintiffs' work, any such use as Plaintiffs claim was made would be non-actionable as fair use under Section 107 of the Copyright Act, 17 U.S.C. § 107.

75. Plaintiffs' actions, including the commencement of this litigation, constitute copyright misuse.

76. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel and/or waiver.

77. Under Section 412(1) of the Copyright Act, 17 U.S.C. § 412(1), Plaintiffs are barred from the recovery of statutory damages and attorneys' fees (as provided by Sections 504 and 505 of the Copyright Act, 17 U.S.C. §§ 504, 505) because Missy Chase Lapine's copyright claim in *Sneaky Chef* was not registered prior to the commencement of the alleged infringement or within 90 days of the first publication of *Sneaky Chef*.

78. Plaintiffs do not own any valid trademark or trade dress that has been used or infringed by defendant Jessica Seinfeld.

79. Plaintiffs are barred from relief or recovery under N.Y. Gen. Bus. Law §§ 360-k and 360-m, because Plaintiffs' putative trademarks have not been registered with the Secretary of State of New York under N.Y. Gen. Bus. Law §§ 360-a-j.

80. The recovery of damages and profits Plaintiffs seek under the New York Anti-Dilution Statute, N.Y. Gen. Bus. Law § 360-1, is unavailable under that provision.

81. Since plaintiff Lapine is a public figure, she cannot assert a valid claim for relief for slander because the remarks complained of were made without malice.

82. The remarks complained of were not statements of fact, but overstatements of opinion.

83. The remarks complained of constituted rhetorical hyperbole.

84. The remarks complained of are subject to qualified privilege.

WHEREFORE, Jessica Seinfeld and Jerry Seinfeld demand judgment as follows:

- A. Ordering that plaintiffs take nothing by way of their Complaint;
- B. Dismissing the Complaint with prejudice;
- C. Awarding Jessica Seinfeld and Jerry Seinfeld their costs and attorneys' fees

herein; and

- D. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 22, 2008

s/ Richard Dannay
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Attorneys for Plaintiffs Missy Chase Lapine and
 The Sneaky Chef, Inc.

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

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MISSY CHASE LAPINE, and THE SNEAKY	:	ECF CASE
CHEF, Inc.,	:	
	:	Civil Action No.: 08-CV-00128 (LTS)
Plaintiffs,	:	
	:	
v.	:	<u>FIRST AMENDED COMPLAINT</u>
JESSICA SEINFELD, JERRY SEINFELD,	:	
HARPERCOLLINS PUBLISHERS, INC., and	:	
DEPARTURE PRODUCTIONS, LLC,	:	Jury Trial Demanded
Defendants.	:	
-----	X	

Plaintiffs Missy Chase Lapine and The Sneaky Chef, Inc., in this first
 amended complaint against defendants Jessica Seinfeld and Jerry Seinfeld,

add defendants HarperCollins and Departure Productions, and allege as follows:

PRELIMINARY STATEMENT

1. This action is for copyright infringement, trademark infringement, unfair competition, injury to business reputation, breach of contract, and defamation. In April 2007, plaintiff Missy Chase Lapine ("Lapine"), based on years of research, published *The Sneaky Chef: Simple Strategies for Hiding Healthy Foods in Kids' Favorite Meals* (the "Book" or "The Sneaky Chef"). *The Sneaky Chef* achieved immediate critical acclaim and commercial success for its unique and innovative approach to improving children's eating habits by, among other things, camouflaging purees of carefully selected fruits and vegetables (like spinach and sweet potato) as ingredients in unhealthy or less healthy food desired by children, like cheeseburgers, grilled cheese sandwiches and brownies.

2. Prior to securing her book with publisher Running Press, an imprint of Perseus Books Group ("Perseus"), Lapine twice submitted substantial parts of her manuscript to HarperCollins Publishers ("HarperCollins") for consideration. HarperCollins read and retained possession of her submissions. HarperCollins turned down the opportunity to publish Lapine's book on both occasions.

3. In October 2007, six months after Lapine's Book was published, defendant HarperCollins and defendant Jessica Seinfeld published and authored Deceptively Delicious: Simple Secrets to Getting Your Kids Eating Good Food (the "Infringing Work" or "Deceptively Delicious"), which brazenly plagiarized The Sneaky Chef, and misappropriated the Book's trademark – a caricature of a winking chef holding a finger to her lips (as if to say "shhh") and hiding carrots behind her back. Defendant Departure Productions, LLC ("Departure"), claims copyright in the Infringing Work. Fueled by a massive, celebrity-driven marketing campaign, Jessica Seinfeld's book became a commercial success, climbing to the top of The New York Times best seller list.

4. Jessica Seinfeld's success was accompanied by accusations on the Internet and in the media that, based on the striking and substantial similarities between the two books, Jessica Seinfeld had plagiarized The Sneaky Chef.

5. Seeking to deflect those accusations, and apparently not content that his wife had misappropriated Lapine's book, defendant Jerry Seinfeld, Jessica's husband, embarked on a national media campaign of malicious defamation against Lapine. On the Late Show With David Letterman, Jerry Seinfeld stated, among other things, that his wife's book came out "at the

same time” as Lapine’s; that his wife “never saw” or “read” Lapine’s book before hers was published; that Lapine was a “wacko” celebrity stalker who, like the infamous stalkers who had terrorized David Letterman and his family, “waited in the woodwork” to “spring out” and attack his wife; and that Lapine was an “angry and hysterical” woman who posed a potentially violent threat (“assassin”) to the Seinfelds. Likewise, on E! News, Seinfeld referred repeatedly to Lapine as a “nut job” who had “come[] out of the woodwork” to attack his wife with false accusations of plagiarism.

6. All of Jerry Seinfeld’s statements were false and made recklessly and with malice. Jessica Seinfeld’s book came out six months after Lapine’s; Jessica Seinfeld saw and read t Lapine’s Book before Jessica Seinfeld’s was published; Lapine does not suffer from any mental infirmity; she is not a celebrity stalker; she is not a violent or dangerous person; she did not and does not engage in extortion; she is not a liar; she did not, until the filing of this complaint, make any specific accusations against Jessica Seinfeld; she did not fabricate accusations against Jessica Seinfeld to gain media attention, enrich herself or harass the Seinfelds; and she was not lying in wait for an opportunity to become embroiled in a controversy with any celebrity, including the Seinfelds.

7. Defendants Jessica Seinfelds, HarparCollins and Departures' conduct violates federal and New York law. Jerry Seinfeld's malicious, nationally televised attack on Lapine constitutes slander under New York law.

8. Jessica Seinfeld plagiarized plaintiff's Book and infringed Lapine's trademark. HarperCollins seized Lapine's property as embodied in her manuscript, and used her work in publishing Seinfeld's infringing work, all in violation of state and federal law. HarperCollins currently publishes the Infringing work. Departure Productions LLC, according to the Infringing Work's copyright page, owns the copyright in the Infringing Work. Accordingly, Lapine brings this action to recover compensatory and punitive damages.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b) and 15 U.S.C. § 1121, as well as the doctrine of pendent jurisdiction.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the claims arise, and defendants reside, in this district.

THE PARTIES

11. Plaintiff Missy Chase Lapine is a citizen of the State of New York and resides in Irvington, New York.

12. Plaintiff The Sneaky Chef, Inc. is a corporation organized and existing under the law of the State of New York, with its principal place of business in Irvington, New York.

13. Defendant Jessica Seinfeld is a citizen of the State of New York and resides in New York, New York.

14. Defendant Jerry Seinfeld is a citizen of the State of New York and resides in New York, New York. Jerry Seinfeld is an enormously wealthy and well-known actor. From 1990 to 1998, he was the star of *Seinfeld*, one of the most popular programs in television history. He is married to defendant Jessica Seinfeld.

15. Defendant HarperCollins Publishers, Inc. is a corporation organized and existing under the law of the State of Delaware, with its principal place of business in New York, New York.

16. Defendant Departure Productions, LLC is a limited liability company organized and existing under the law of the State of New York, with its principal place of business in New York, New York. Departure claims copyright in the Infringing Work.

FACTS

Lapine Conceives of, Researches and Creates the Book

17. Lapine's professional work has focused on food, nutrition and health. She is the former publisher of Eating Well magazine and, before that, worked at Gourmet magazine. Lapine is certified in the master techniques of healthy cooking and was trained in classical cooking techniques by the Institute of Culinary Education. Lapine serves on the Culinary Arts Faculty of The New School in New York City; is a collaborator with the Alliance for a Healthier Generation, a partnership between the American Heart Association and the William J. Clinton Foundation devoted to helping schools serve healthier lunches; and serves on the Children's Advisory Council of Morgan Stanley Children's Hospital of New York-Presbyterian, where The Sneaky Chef nutrition techniques are used with pediatric patients.

18. In or about 2002, Lapine began researching methods for getting children to eat healthier foods. Spending her energy, time, and money, Lapine conducted numerous taste tests, focus groups and interviews, and consulted extensively with leading nutritionists, pediatricians and chefs. Her research resulted in an innovative solution: camouflage healthy foods so that children will eat them without realizing or objecting.

19. Through her own ingenuity, effort, and expense Lapine developed original methods for combining ingredients, including specially selected purees of vegetables that children typically resist, such as spinach or cauliflower, with dishes that children typically crave, such as brownies, pizza and pancakes.

20. Lapine then prepared a manuscript of the Book that set forth Lapine's views on nutrition, child-rearing and American eating habits, as well as her explanation of the purees and how to put her methods to use.

21. On or about February 6, 2006, Lapine sent a 139-page book proposal, which included extensive chapters from the Book manuscript, to HarperCollins. Four days later, a representative from William Morrow, an imprint of HarperCollins, sent Lapine a letter rejecting the proposal. In or about early May 2006, Lapine, through her literary agent, again submitted to HarperCollins her book proposal, again including extensive chapters from the Book manuscript. On May 24, 2006, HarperCollins rejected Lapine's second proposal, stating that "the children's food segment of the market is a tough one to navigate during a particularly tough time in the cookbook category in general. The influence of the food network and the availability of recipes online have really hurt this area. I'm sorry to say we'll be passing

...” HarperCollins retained possession of the material submitted by Lapine.

Lapine Publishes the Book and Obtains Copyright and Trademark Protection

22. In or about June 2006, Perseus, another book publisher, accepted Lapine’s proposal for the Book. On or about August 1, 2006, Lapine and Perseus entered into a contract for publication of the Book.

23. On or about April 2, 2007, Perseus, through its Running Press imprint, released the Book. The reviews were extremely positive, with the culinary press and general media lauding Lapine’s revolutionary approach to disguising healthy foods inside children’s favorite dishes. Within three weeks of publication, the Book became a New York Times best seller.

24. The Sneaky Chef, Inc. filed applications with the United States Patent and Trademark Office for trademark registration of the word trademark “Sneaky Chef” and the image trademark that appears on and in the Book and on plaintiffs’ Web site. The Sneaky Chef, Inc. is the co-owner with Lapine of all rights to the trademarks and is engaged, together with Lapine, in developing and marketing books, DVDs and other products that are based on Lapine’s methods and concepts and utilize the trademarks.

25. As part of a campaign to market and promote the Book, Lapine appeared on the Today Show, Fox and Friends and numerous other

television programs; appeared on numerous national and local radio programs; was featured in national magazines such as Parenting and Women's Day and in numerous newspapers; and did a book tour throughout the country, which included bookstore and supermarket appearances and signings.

26. During this book tour and marketing campaign, "The Sneaky Chef", and "shooshing" chef drawing, trademarks became well known and famous. The public began to associate those trademarks with Lapine's ideas and work embodied in her Book. Word of mouth began to spread about Lapine's book and technique. The trademarks, helped people identify Lapine's work.

Jessica Seinfeld Copies the Book, Notwithstanding a Cease And Desist Demand from Lapine and Her Publisher

27. In or about May 2007, while promoting and marketing the Book, Lapine learned that Jessica Seinfeld and her publisher, HarperCollins, were planning to publish the Infringing Work. In an eight-page promotional brochure for the Infringing Work she received, Lapine observed blatant similarities between the Infringing Work and her Book, including, among other things, its cover design and content. Lapine immediately brought these similarities to the attention of her publisher.

28. On or about July 9, 2007, seeking to prevent any violation of Lapine's rights, Running Press brought to the attention of Jessica Seinfeld's publisher the blatant similarities between the Book and the plans for the Infringing Work (including the cover art, the subtitles, the organization and the overall look and feel).

29. On or about July 31, 2007, Jessica Seinfeld's publisher sent Running Press a letter denying that Jessica Seinfeld copied, or was even influenced by, the Book, asserting that the Infringing Work was "entirely original to" Jessica Seinfeld, and stating that "we do not believe it necessary or appropriate to make any changes to the design or content of [the Infringing Work]."

Jessica Seinfeld Infringed Lapine's Copyright

30. In October 2007, defendants infringed plaintiffs' copyright by publishing and selling the Infringing Work which was copied from plaintiffs' Book.

31. As compared with its promotional flyer, the Infringing Work was published with only minor and insignificant modifications to the cover art and subtitle - the cover design of the Infringing Work was slightly altered by moving the pictured carrots from their original position (held in the female chef's hand behind her back, exactly where the chef in The Sneaky Chef

trademark holds her carrots) to a cutting board behind her back, and the Infringing Work's subtitle was slightly changed from "Sneaky Secrets to Get Your Kids Eating Good Food" to "Simple Secrets to Get Your Kids Eating Good Food."

32. In writing and publishing the Infringing Work - which, in its content, artwork and overall look and feel, is substantially similar to the Book - defendants blatantly and willfully copied the Book's original concept, expression, methodology, organization, structure, design, styling and look and feel. Defendants misappropriated Lapine's property as manifest throughout the Book manuscript and its recipes. Defendants also infringed Lapine's trademark. Defendants also represent that Lapine's protected expression and property originated with Seinfeld.

33. Defendants' infringement consists of copying Lapine's protected original expression, philosophy, premise, approach, explanations, discussions, reflections, organization, methodology and overall look and feel, including (without limitation) the following respects:

- (a) Both the Book and the Infringing Work contain introductions written by doctors calling attention to the growing problem of obesity in American children and the difficulties inherent in

providing sound nutrition to resistant children, and praising the author for creative, clever and convenient solutions for parents.

(b) Both the Book and the Infringing Work state that children need to feel a semblance of control over what they eat, while calling attention to the connection between good nutrition and how children behave and achieve. Both works discuss the dangers of too much sugar in a child's diet (e.g., the sugar high and ensuing crash). Both works address these issues by recommending camouflaging carefully-selected pureed healthy foods inside children's favorite foods.

(c) Both the Book and the Infringing Work begin with the author's personal anecdote of mealtime struggles with her own picky eaters. In fact, both works include a story about how one of the author's children is a picky eater who influenced a non-picky sibling to dislike food. Specifically, within that anecdote:

- the Book describes "*begging*, pleading, threatening, and bribing," as well as "*coercing kids to eat* what's on their plates."

- the Infringing Work describes “*begging* my kids to eat vegetables,” as well as “*coerc[ing] them to eat* food they found disgusting.”

(d) Both the Book and the Infringing Work explain that the author is not a professional chef, just a mother who desires to have peace at the dinner table and to feed her children nutritious food. Both works discuss how the author overcame the guilt of tricking her kids into eating healthy food.

- The Book states that “this method has brought *peace to our family table*,” that “[i]n many families, the dinner table becomes a battleground and meal time is a *power struggle*,” and that “I couldn’t use logic, but I couldn’t afford to *give up* either.”
- The Infringing Work states: “I just wanted a little *peace around the dinner table*,” and continues, “I want my kids to associate food and mealtimes with happiness and conversations, not *power struggles* and strife.” The Infringing Work acknowledges, “[W]e just want to *give up*.”

(e) Both the Book and the Infringing Work characterize the author's solution as an "*epiphany*" and state the benefits that accompany nutritional camouflage.

- The Book explains: "There are many *foods that kids won't go near* in their virgin condition, but after ten seconds in the blender, those same broccoli stalks they made a face at yesterday are now eaten without a fight."
- The Infringing Work explains: "I have become an expert at hiding vegetables purees and other healthful additional - *foods my kids wouldn't touch* otherwise - in all of their favorite dishes."
- As an example, both the Book and the Infringing Work advocate allowing children to put *sprinkles* on their food to enhance its appeal.

(f) Both the Book and the Infringing Work discuss how the author succeeded in hiding "good-for-you" foods in the dishes that kids naturally love, and how the author's family is now happier.

- The Book states: "It got our *whole family* eating together in peace."

- The Infringing states: “[T]he *whole family* is happier and we can finally enjoy mealtimes again.”

(g) Both the Book and the Infringing Work address arguments against “sneaking” vegetables into children’s dishes and then systematically refute each one.

- The Book likens the practice to a form of “*loving deceit*.”

- The Infringing Work likens the practice to a form of “[l]oving [d]eception.”

(h) Both the Book and the Infringing Work state that forbidden foods are more alluring to children and suggest that, for that reason, foods such as candy should not be forbidden.

(i) Both the Book and the Infringing Work provide explanatory passages at the beginning of the work regarding nutrition and directions for the creation and use of the purees, with the latter portion of the work discussing the use of the purees.

(j) The Book, on its cover, spine and first page, uses the caricature of a chef, winking, holding a finger to her lips as if saying “shhh” and hiding carrots behind her back, as well as repeatedly using a drawing of a carrot wearing sunglasses

making the same “shhh” gesture. In a substantially similar way, the cover of the Infringing Work uses a caricature of Jessica Seinfeld as a chef, winking, with carrots on a cutting board behind her back, as well as repeatedly using, including on its spine, first page and insert, a drawing of Jessica Seinfeld holding a finger to her lips as if saying “shhh.”

(k) The subtitle of the Book, “Simple Strategies for Hiding Healthy Foods in Kids’ Favorite Meals,” is substantially similar to the subtitle of the Infringing Work, “Simple Secrets to Get your Kids Eating Good Food.”

(l) In both the Book and the Infringing Work, each recipe is printed on a page with a border around the text. In the Book, the border is a straight-line box; in the Infringing Work, the border is a wavy-line box.

(m) Both the Book and the Infringing Work use line-drawn, cartoon graphics, except when showing dishes made according to recipes, they use full-color photographs.

(n) Both the Book and the Infringing Work include icons with each recipe. The Book uses icons that represent the particular

sneaky method used; the Infringing Work uses icons that represent the particular fruits and vegetables used.

(o) Both the Book and the Infringing Work, in setting forth the use of purees, use a different font color for purees from the color used for the other ingredients.

(p) Both the Book and the Infringing Work suggest the same approach to cooking healthy food for children -- get the right tools (e.g., a small food processor), get the “*staple*” foods, make the vegetable and fruit purees once a week and refrigerate or freeze them, and then, at meal time, make the recipes using the purees to inject healthy foods into the dishes.

(q) Both the Book and the Infringing Work next set forth the staples of a well-stocked kitchen, including a list of which foods children will most often and least often eat without a fight.

(r) Both the Book and the Infringing Work recommend *steaming* the vegetables, pureeing them in a *food processor*, *packaging* them in *1/4 cup baggies*, and then *freezing* them for later use.

- The Book states: “[Y]ou will find the Make-Ahead . . . are your best friends . . . once you have

these purees and blends in your refrigerator or freezer, *simply grab a spoonful and mix it into the recipes as called for.*" The Book claims that with respect to "... the scratch recipes, you'll spend *less than thirty minutes* for each one."

- The Infringing Work states: "You will quickly learn to prepare, cook, puree, and portion the purees. Then the *purees will be available to use when they're called for*, just like any other ingredient in my recipes." The Infringing Work claims that "... the recipes ... are doable in *thirty minutes or less* ..."

(s) Both the Book and the Infringing Work talk about "*sneak[ing]*" the purees into typical kid food to remove "stress." The Book calls this being "*sneaky*," and the Infringing Work refers to it as the "*sneak it in*" technique.

- The Book states: "*[P]arental control* does not have to come in the form of a *constant battle*."

- The Infringing Work states: “It empowers you to exert some legitimate *control* over what your children eat, without inviting the *usual fights*.”

(t) Both the Book and the Infringing Work also provide suggestions for and explanations of how purees can be incorporated into pre-packaged, store-bought foods.

(u) Both the Book and the Infringing Work implore the reader to enthusiastically test the purees and recipes.

- The Book states, “[L]et’s put these clever methods into *action*”

- The Infringing Work states, “[Y]ou’re *ready for action*.”

(v) Both the Book and the Infringing Work suggest adding the same specific fruit or vegetable puree to the same dishes, as set forth below:

Children’s Dish	Hidden Puree Used in the Book	Hidden Puree Used in the Infringing Work
Chocolate Pudding	Avocado	Avocado
Chocolate Chip Cookies	White Bean	White Bean
Brownies	Spinach	Spinach
Grilled Cheese	Sweet Potato	Sweet Potato

French Toast	Sweet Potato/Carrot	Sweet Potato/Carrot
Mac 'n Cheese	Cauliflower	Cauliflower
Meat Sauce/Bolognese	Sweet Potato	Sweet Potato
Twice-Baked Potatoes	Cauliflower	Cauliflower
Chicken Tenders	Sweet Potato	Sweet Potato
Peanut Butter and Jelly Muffins	Carrot	Carrot
Green Eggs	Spinach	Spinach

To Deflect Attention From His Wife's Infringement, Jerry Seinfeld Defames Lapine on National Television

34. Upon release of the Infringing Work in early October 2007, Jessica Seinfeld launched a national promotional campaign, appearing on such popular television programs as The Oprah Winfrey Show and Live with Regis and Kelly. The Infringing Work received favorable reviews and became a best seller.

35. In light of the substantial similarity between the Book and the Infringing Work, within weeks of publication of the Infringing Work, numerous statements were made on the Internet and in print and television media that Jessica Seinfeld had plagiarized the Book.

36. On October 29, 2007, to deflect attention from the mounting public accusations of plagiarism against his wife, defendant Jerry Seinfeld used an appearance on the immensely popular CBS television program, Late Show With David Letterman, to launch a malicious, premeditated and knowingly false and defamatory attack, uttering egregiously false and reprehensible statements about Lapine.

37. In that appearance, Jerry Seinfeld stated that Lapine was a mentally unbalanced celebrity stalker who falsely concocted accusations of plagiarism to thrust herself into the limelight and harass the Seinfelds. Jerry Seinfeld stated that Lapine was an “angry” and “hysterical” “wacko” who had been “waiting in the woodwork” to “spring out” and “go wacko” on the Seinfelds. Seinfeld stated that Lapine was similar to the “wackos” who had victimized Letterman in two widely publicized and harrowing episodes several years ago. To bring home the point that Lapine was a mentally unhinged stalker of the Seinfelds, Jerry Seinfeld further suggested that Lapine could be an “assassin.”

38. Seinfeld’s slanderous attack on Lapine included, among others, the following statements uttered before a national television audience.

David Letterman: And speaking of mother, the mother of your child, uh, children, your wife, big cookbook, congratulations on the cookbook.

Jerry Seinfeld: Thank you very much, yes, my wife has a very big cookbook, but -

Letterman: What's the name of the cookbook?

Seinfeld: -- the cookbook is called, uh, *Deceptively Delicious*, but there is cookbook controversy, now you know...

Letterman: What do you mean?

Seinfeld: -- I don't like to come on the show without some controversy brewing, where I can inject myself --

* * * * *

Seinfeld: So, um, now my wife likes to cook, so she comes up with this thing where she's pureeing vegetables and she's putting them in the kid's food, and the kids, so they get like better nutrition, and she's doing this and then her friends start doing it, and then she has two sisters and they have kids, and they start doing it. So they're passing all these recipes around. So somebody says to her, you should put these recipes into a cookbook, make a cookbook.

Letterman: Right. Excellent idea.

Seinfeld: Because it's healthy and we, the fat kids and the obesity, and it's positive, positive thing.

Letterman: It's a serious problem. Sure.

Seinfeld: So she makes the cookbook, everybody is happy, it does well, seemingly an innocent sequence of events.

Letterman: Mmm.

Seinfeld: *Now you know, having a career in show business, one of the fun facts of celebrity life is, wackos will wait in the woodwork to pop out at certain moments of your life to inject a little adrenalin into your life experience.*

Letterman: Yes, just a little tap to get your attention.

Seinfeld: *Yes, I have wackos, you have had wackos. I believe your wackos are very well documented.*

Letterman: Heh, yeah. Uh, yes. That's one good thing. You got all the paperwork.

Seinfeld: *Now, if you're any good as a woodwork wacko, you are patient. You wait. You pick your moment and then you spring out and go wacko. So, there's another woman who had another cookbook. And it was a similar kind of thing with the food, and the vegetables in the food, and uh, my wife never saw the book, read the book, used the book.*

Letterman: Knew nothing about it.

Seinfeld: Didn't know anything about it. *But the books came out at the same time.*

Letterman: Mm hmm.

Seinfeld: *So this woman says, "I sense this could be my wacko moment."*

Letterman: Ahhh. Oh.

Seinfeld: *So she comes out and she says, and she accuses my wife, she says, you stole my mushed-up carrots. You can't put mushed-up carrots in a casserole, I put mushed-up carrots in the casserole. It's vegetable plagiarism.*

Letterman: It's ridiculous.

***** *

Letterman: And what does this woman think, that she's the first one to prepare and eat food?

Seinfeld: *I, I guess so. And I'm more upset, we're sorry that she is, you know, angry and hysterical, and because she's a three-name woman, which is what concerns me. She has three names.*

Letterman: Oh, mmm.

Seinfeld: *And you know, if you read history, many of the three-name people do become assassins.*

Letterman: Yeah, yeah. Now, um --

Seinfeld: *Mark David Chapman. And you know, James Earl Ray. So, that's my concern.*

39. Jerry Seinfeld's statements on the Letterman program stated, expressly and by inference, implication and insinuation, that Lapine is a mentally unhinged celebrity stalker who poses a potentially violent threat to the Seinfelds, and that she falsely concocted accusations of plagiarism against Jessica Seinfeld. A reasonable person watching Jerry Seinfeld on the Letterman program necessarily would conclude that Jerry Seinfeld had imputed to Lapine mental illness and potentially violent or, at a minimum, hostile, tendencies, proclivities and activities.

40. For example, when Jerry Seinfeld told Letterman, "*I have wackos, you have had wackos. I believe your wackos are very well documented,*" Seinfeld was referring to two stalking episodes involving Letterman that received extensive national press coverage. One such episode, which occurred in the late 1990s, involved Margaret Mary Ray, a woman diagnosed with schizophrenia who repeatedly broke into Letterman's home. The other widely-publicized episode involved a 2005 plot to kidnap Letterman's infant son and hold him hostage for a \$5 million ransom.

41. On the same day he appeared on Late Show With David Letterman, Jerry Seinfeld also appeared on E! News, broadcast on the E! network. Seinfeld used his appearance on that program again to make outrageously false statements about Lapine's mental health, stating that she

was a “nutjob” who had seized upon the cookbook controversy to extort money from the Seinfelds:

Host: Your wife has done such great philanthropy work over the years, especially with children. There’s lots of controversy now around her book. Is she unfairly being criticized? That’s right. Yeah, exactly. And what does this woman think, that she’s the first one to prepare and eat food?

Seinfeld: *As a celebrity, I enjoy the fact that whenever you do something; some nut job comes out of the woodwork and gets hysterical. I know the truth that nothing ever happened. I don’t know if you know the story about the guy I went to college with who claimed I stole the whole TV series from him, and he sued me for 100 million dollars. So this woman is another kind of nut. You know, she thinks she invented vegetables. And she’s accusing my wife of stealing her mashed-up carrots.*

42. Jerry Seinfeld’s statements on the E! News program stated, expressly and by inference, implication and insinuation, that Lapine is a mentally unhinged celebrity stalker who seized upon the cookbook controversy to concoct false accusations of copying to extort money from the Seinfelds. A reasonable person watching Jerry Seinfeld on E! News necessarily would conclude that he, directly and by implication, had imputed to Lapine mental illness and a tendency and proclivity to lie and extort.

43. In both television appearances Jerry Seinfeld's statements were offered as facts or implied facts known to him - someone close to his wife's book controversy who has *insider* information.

44. The statements uttered by Jerry Seinfeld about Lapine, as described above, are entirely false. Lapine does not suffer from any mental infirmity; she is not a celebrity stalker; she is not a violent or dangerous person; she did not and does not engage in extortion; she is not a liar; she did not, until the filing of this complaint, make any specific accusations against Jessica Seinfeld (although she had more than ample grounds to do so); she did not fabricate accusations against Jessica Seinfeld to gain media attention, enrich herself or harass the Seinfelds; and she was not lying in wait for an opportunity to become embroiled in a controversy with any celebrity -- much less the Seinfelds.

45. Lapine is not a public figure, but even if Lapine were to be considered a public figure for the purposes of her defamation cause of action, Jerry Seinfeld knew that his defamatory statements about Lapine were false, and made with malice, or reckless disregard of the truth.

46. Jerry Seinfeld's defamatory statements about Lapine have caused and are continuing to cause Lapine severe damage.

First Claim for Relief

On Behalf of Plaintiff Missy Chase Lapine

(Copyright Infringement under 17 U.S.C. §§ 101 et seq. --Against

Defendants Jessica Seinfeld, HarperCollins, and Departure)

47. Plaintiff Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 46.

48. The Book contains a substantial amount of protected material wholly original with Lapine and copyrightable subject matter under the laws of the United States. The expression, presentation, arrangement, structure and organization of the Book's content, as well as the Book's explanations, descriptions, phrases, philosophies, recipes, "sneaky tips," methods, solutions, premise, styling and designs were the result of Lapine's original, creative and independent authorial judgment. The Book's components are expressed by Lapine in a sequence, order, arrangement, organization and structure selected by, and original to, Lapine.

49. Since February 2006, Lapine has been, and is, the sole proprietor of all right, title, and interest in and to the copyright in the Book.

50. At all times relevant hereto, all copies of the Book made by Lapine or under her authority or license in the United States and elsewhere have been printed in strict conformity with the Copyright Act of the United States

and all other laws governing copyright in the areas where the Book has been published.

51. Lapine has conveyed no copyright interest in the Book or any edition thereof to HarperCollins, Jessica Seinfeld, or Departure.

52. Defendant Jessica Seinfeld incorporated Lapine's original expression, arrangement, presentation, structure, methods, phrases, philosophies, designs, styling, descriptions, organization, structure, premise, and recipes, incorporating significant elements of the Book's copyrightable, protected, original expression into the Infringing Work.

53. As a result of defendant Jessica Seinfeld's infringement of Lapine's copyright, the Infringing Work and the Book, are substantially similar.

54. Defendants, with knowledge of Lapine's ownership of the copyright in the Book, willfully infringed Lapine's rights by producing, promoting, distributing and otherwise exploiting the Infringing Work.

55. Departure claims Copyright in the Infringing Work, and HarperCollins is the publisher of the Infringing Work. Defendants have earned revenues from producing, promoting, distributing and otherwise exploiting the Infringing Work.

56. As a direct and proximate result of Defendants' conduct, Lapine has been damaged in an amount to be determined at trial.

Second Claim for Relief

On Behalf of Missy Chase Lapine and The Sneaky Chef

(Trademark Infringement under Lanham Act §§ 32 and 43(a) --Against
Defendants Jessica Seinfeld, Departure, and HarperCollins)

57. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 56.

58. Plaintiffs are the sole proprietors of all right, title and interest in The Sneaky Chef word and image trademarks.

59. Lapine first used The Sneaky Chef word and image trademarks in commerce in connection with her business in or about February 2007. The image trademark contains a line drawn caricature image of a female chef winking, holding a finger to her lips as if to say "shhh", and hiding carrots behind her back.

60. Subsequently, Lapine initiated the registration process for both the "Sneaky Chef" word trademark and the above-described image trademark. On December 25, 2007, the United States Patent and Trademark office issued Lapine Registration No. 3360525 related to the word trademark. Additional registration applications: Serial No. 77315353, as related to the

word trademark, and Serial Nos. 77254965 and 77336128, as related to the image trademark, are pending.

61. By virtue of the Book's sales and promotion, as well as the distinctive appearance and nature of The Sneaky Chef word and image trademarks, the trademarks have acquired a secondary meaning attributable to plaintiffs. Lapine's education, expertise and years of effort in improving the diets and health of American children and the culinary arts have contributed to the credibility and goodwill fostered in the trademarks.

62. Jessica Seinfeld (who has no education, expertise or experience concerning children's nutrition or culinary arts) and the codefendants have, in bad faith, adopted a confusingly similar mark, making use, on the Infringing Work's cover, of a line-drawn caricature of a female chef preparing food, winking, while hiding carrots behind her back. An additional image appears on the spine of the Infringing Work and on Jessica Seinfeld's Web site containing a line-drawn image of a female holding a finger to her lips as if to say "shhh."

63. The above-described elements of the Infringing Work are designed and conceived to mislead the public into associating the Infringing Work with the Book, and are likely to cause consumer confusion, initial interest confusion, mistake and deception of the public as to the identity and origin

of plaintiffs' goods, and as to any affiliation or relationship between the two works and parties, causing irreparable harm to plaintiffs.

64. The Infringing Work has been advertised, sold and distributed in interstate commerce.

65. As a direct and proximate result of Defendants' conduct, plaintiffs have been damaged in an amount to be determined at trial

Third Claim for Relief

On Behalf of Missy Chase Lapine

(Unfair Competition under Lanham Act § 43(a) --Against Defendants

Jessica Seinfeld, HarperCollins, and Departure)

66. Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 65.

67. Through great personal effort, work, expense, and sacrifice, Lapine researched, cooked, and tested techniques, recipes, and systems to help parents feed vegetables to their children with the least resistance. Lapine's independent effort resulted in the development of techniques, recipes, and systems that were Lapine's property.

68. Lapine's years of effort and her resulting property were contained in the Book manuscript she sent to HarperCollins for review and possible publication. Jessica Seinfeld, her employees, agents, or representatives,

misappropriated Lapine's property for use, in whole or in part, in the Infringing Work. Lapine's property is manifest throughout the Infringing Work.

69. In addition, Lapine's Book contains a substantial amount of protected material wholly original with Lapine; copyrightable subject matter under the laws of the United States. The expression, presentation, arrangement, structure and organization of the Book's content, as well as the Book's explanations, descriptions, phrases, philosophies, recipes, "sneaky tips," methods, solutions, premise, styling and designs were the result of Lapine's original, creative and independent authorial judgment. The Book's components are expressed by Lapine in a sequence, order, arrangement, organization and structure selected by, and original to, Lapine.

70. Since February 2006, Lapine has been, and is, the sole proprietor of all right, title, and interest in and to the copyright in the Book.

71. At all times relevant hereto, all copies of the Book made by Lapine or under her authority or license in the United States and elsewhere have been printed in strict conformity with the Copyright Act of the United States and all other laws governing copyright in the areas where the Book has been published.

72. Lapine has conveyed no copyright interest in the Book or any edition thereof to HarperCollins, Departure, or Jessica Seinfeld.

73. Defendants incorporated Lapine's original expression, arrangement, presentation, structure, methods, phrases, philosophies, designs, styling, descriptions, organization, structure, premise, and recipes, incorporating significant elements of the Book's copyrightable, protected, original expression into the Infringing Work.

74. Therefore, the following representations, made by defendants Jessica Seinfeld, HarperCollins, or Departure, including their employees, representatives, or agents, constitute misrepresentations of fact, false descriptions of fact, and false designations of origin:

- from page 9 of the Infringing Work, commenting on the content of the Infringing Work, "[Seinfeld] has *done all the work*, and now we can benefit from *her efforts*." (Emphasis added.);
- from the website advertising the Infringing Work, <http://www.deceptivelydelicious.com/site/about-the-author.php>, "...the idea for my book was my own, and every recipe in the book came from my own experimentation, with my own family, in my own kitchen. And it all started with my own 'eureka' moment."; and

- from the copyright page, “DECEPTIVELY DELICIOUS. Copyright © 2007 Departure Productions, LLC.”

75. Defendants’ statements and representations assign the entire credit for the Infringing Work and Lapine’s property contained therein, to themselves, and fail to credit Lapine or her Book.

76. The above described misrepresentations are designed, are conceived, and are likely, to cause confusion, cause mistake, or to deceive as to the origin of the Infringing Work and Lapine’s property contained therein.

77. As a direct and proximate result of defendants’ conduct, Lapine has been damaged in an amount to be determined at trial.

Fourth Claim for Relief

On Behalf of All Plaintiffs

(Trademark Infringement under N.Y. Gen. Bus. Law § 360-k --Against Defendants Jessica Seinfeld, Departure, and HarperCollins)

78. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 77.

79. Defendants have used and continue to use, without plaintiffs’ consent, a colorable imitation of The Sneaky Chef trademark in connection with the sale, distribution, offering for sale, or advertising of the Infringing Work.

80. Defendants' improper and bad-faith use of a confusingly similar mark is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services.

81. Defendants intended to cause confusion or mistake or to deceive as to the source of origin of such goods or services.

82. As a direct and proximate result of Defendants' conduct, plaintiffs have been damaged in an amount to be determined at trial.

Fifth Claim for Relief

On Behalf of All Plaintiffs

(Injury to Business Reputation under N.Y. Gen. Bus. Law § 360-1 --Against
Defendants Jessica Seinfeld, Departure, and HarperCollins)

83. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 82.

84. Jessica Seinfeld's use of a confusingly similar trademark injures and creates a likelihood of injury to plaintiffs' business reputation because persons encountering Jessica Seinfeld and her products and services will believe that Jessica Seinfeld is affiliated with or related to or has the approval of plaintiffs.

85. Any adverse reaction by the public to Jessica Seinfeld and the quality of her products and the nature of her business will injure the business

reputation of plaintiffs and the goodwill that they enjoy in connection with The Sneaky Chef trademark, goods and services.

86. As a direct and proximate result of Jessica Seinfeld's conduct, plaintiffs have been damaged in an amount to be determined at trial.

Sixth Claim for Relief

On Behalf of Plaintiff Missy Chase Lapine

(Slander and Slander Per Se --Against Defendant Jerry Seinfeld)

87. Plaintiff Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 86.

88. Jerry Seinfeld's false statements about Lapine constitute slander and/or slander per se.

89. Jerry Seinfeld's statements were textually sufficient for a listener to identify Lapine, and only Lapine, as the target of his falsehoods.

90. Jerry Seinfeld's false and defamatory statements were made with malice, as such statements were made by Jerry Seinfeld with knowledge of their falsity or with reckless disregard for their falsity.

91. As a proximate result of Jerry Seinfeld's false and defamatory statements, Lapine has suffered injury, including pecuniary loss, in an amount to be determined at trial.

92. Because Jerry Seinfeld's made his false and defamatory statements described above knowingly, willfully, maliciously and in conscious disregard of Lapine's rights, Lapine is entitled to an award of punitive damages in an amount to be determined at trial.

Seventh Claim for Relief

On Behalf of Plaintiff Missy Chase Lapine

(Breach of Implied Contract against HarperCollins)

93. Plaintiff Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 92.

94. In February and May of 2006, Lapine sent her Book proposal manuscript to HarperCollins for review.

95. Because HarperCollins is a publisher, and Lapine an author, manuscript submission for review and potential publishing created an implied contract, wherein HarperCollins agreed to accept, and did accept, the manuscript for limited purposes, consistent with their respective position. Harper Collins retained possession of the material submitted by Lapine.

96. Given the relative position of the parties (publisher and author) and the circumstances (author submitting manuscript for consideration of publication), Lapine's submission of the Book manuscript, with its original and novel ideas, philosophy, advice, methods, systems, and recipes, was

performed with the understanding and expectation, fully and clearly understood by HarperCollins, that Lapine would be reasonably compensated if HarperCollins made use of the Book manuscript, or Lapine's ideas, recipes, or other matter it contained. It was additionally understood and expected by the parties, that with HarperCollins' acceptance of Lapine's Book manuscript, HarperCollins would treat the Book manuscript and its contents in a manner not inconsistent with their understanding and expectation.

97. HarperCollins, their employees, agents, or representatives, breached the implied contract by using the original and novel ideas conveyed in the Book manuscript, without compensating Lapine, by including those ideas in the Infringing Work.

98. HarperCollins, their employees, agents, or representatives, breached the implied contract when they used or allowed the Book manuscript or its contents to serve the writers of the Infringing Work, without compensating Lapine.

99. HarperCollins, their employees, agents, or representatives, breached the implied contract, and their obligation of good faith and fair dealing that is part of the contract when HarperCollins used the Book manuscript or its contents in a manner or for a purpose inconsistent with the

understanding and expectation of the parties, and, without compensating Lapine.

100. Lapine performed all conditions, covenants and promises in accordance with the terms of the implied contract.

101. As a direct and proximate result of HarperCollins' conduct, Lapine has been damaged in an amount to be determined at trial.

Eighth Claim for Relief

On Behalf of Plaintiff Missy Chase Lapine

(Misappropriation and Unfair Competition against HarperCollins)

102. Plaintiff Missy Chase Lapine repeats and realleges the allegations of paragraphs 1 through 101.

103. Through great personal effort, work, expense, and sacrifice, Lapine researched, cooked, and tested techniques, recipes, and systems to help parents feed vegetables to their children with the least resistance. Lapine's independent effort resulted in the development of techniques, recipes, and systems that were Lapine's property.

104. Lapine's years of effort and the resulting property were contained in the Book manuscript she sent to HarperCollins. In February and May of 2006, Lapine sent her Book manuscript to HarperCollins, for the limited purpose of review for possible publication.

105. HarperCollins, its employees, agents, or representatives, misappropriated Lapine's property through its use by codefendants, their employees, agents, or representatives in codefendants' Infringing Work.

106. The misappropriation occurred within the scope, and through the regular and established channels authors use to secure publication. HarperCollins' misappropriation was done for the purpose of selling Lapine's property themselves, via the Infringing Work, in direct competition with Lapine.

107. The misappropriation occurred before Lapine was able to reap the economic value of her property in the market place.

108. As a direct and proximate result of HarperCollins' conduct, Lapine has been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that judgment be entered:

- (1) On the First Claim for Relief, against defendants Jessica Seinfeld, Departure, and HarperCollins, and in favor of Plaintiff Missy Chase Lapine:
 - (a) awarding, pursuant to 17 U.S.C. § 504(b), actual damages and disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for

domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means; and
(b) awarding, pursuant to 17 U.S.C. § 504(c), statutory damages;

(2) On the Second Claim for Relief, against defendants Jessica Seinfeld, Departure, and HarperCollins, and in favor of plaintiff Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to § 35 of the Lanham Act, 15 U.S.C §§ 1117(a) damages, as well as disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means;

(3) On the Third Claim for Relief, against defendants Jessica Seinfeld, Departure, and HarperCollins, and in favor of plaintiff Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to § 35 of the Lanham Act, 15 U.S.C §§ 1117(a) damages, as well as disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international

release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means;

(4) On the Fourth Claim for Relief, against defendants Jessica Seinfeld, Departure, and HarperCollins, and in favor of plaintiffs Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to N.Y Gen. Bus. Law § 360-m, actual damages and disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and (ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means; as well as multiple damages in the amount of three times the damages suffered by plaintiffs, pursuant to N.Y Gen. Bus. Law § 360-m;

(5) On the Fifth Claim for Relief, against defendants Jessica Seinfeld, Departure, and HarperCollins, and in favor of plaintiffs Missy Chase Lapine and The Sneaky Chef, Inc., awarding, pursuant to N.Y Gen. Bus. Law § 360-m, actual damages and disgorgement of all profits attributable to the Infringing Work, including, but not limited to, all profits from (i) distributing the Infringing Work for domestic and international release; and

(ii) otherwise exploiting the Infringing Work through licensing, merchandising or other means; as well as multiple damages in the amount of three times the damages suffered by plaintiffs, pursuant to N.Y Gen. Bus. Law § 360-m;

(6) On the Sixth Claim for Relief, against defendant Jerry Seinfeld and in favor of plaintiff Missy Chase Lapine, awarding compensatory and punitive damages in amounts to be determined at trial;

(7) On the Seventh Claim for Relief, against HarperCollins, and in favor of plaintiff Missy Chase Lapine, awarding contract damages, in an amount proven at trial.


(8) On the Eighth Claim for Relief against defendant HarperCollins, and in favor of Plaintiff Missy Chase Lapine, awarding compensatory and punitive damages according to proof at trial.

(9) Awarding plaintiffs their costs, expenses, interest and reasonable attorneys' fees;

(10) Granting such other and further relief as this Court deems just and proper.

Dated: April 17, 2008

GIRARDI | KEESE

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EXHIBIT DD



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THE SNEAKY CHEF

Word Mark
Goods and Services

THE SNEAKY CHEF

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books, publications, newsletters, pamphlets, periodicals and related printed materials in the fields of nutrition, food preparation and the culinary arts. FIRST USE: 20070316. FIRST USE IN COMMERCE: 20070316

IC 041. US 100 101 107. G & S: Educational services, namely, conducting classes, courses, workshops, seminars, conferences and demonstrations in the fields of nutrition, food preparation and the culinary arts; entertainment in the nature of a television series in the field of nutrition, food preparation and culinary arts. FIRST USE: 20061021. FIRST USE IN COMMERCE: 20061021

IC 043. US 100 101. G & S: Providing information in the field of food preparation and the culinary arts; providing information in the field of food preparation and the culinary arts via the Internet. FIRST USE: 20061001. FIRST USE IN COMMERCE: 20061001

Standard Characters Claimed
Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number 78676069

Filing Date July 22, 2005

Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition October 24, 2006
Registration Number 3360525
Registration Date December 25, 2007
Owner (REGISTRANT) THE SNEAKY CHEF, INC CORPORATION NEW YORK 24 NORTH ASTOR STREET SUITE 13A IRVINGTON NEW YORK 10533
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Sheila J. Levine
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHEF" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark	THE SNEAKY CHEF
Goods and Services	<p>IC 021. US 002 013 023 029 030 033 040 050. G & S: Housewares and kitchen ware, namely, cooking equipment and accessories in the nature of spatulas, mixing bowls, tongs, mashers, storage bowls with covers, baking sheets, cookie sheets, cookie presses, cookie and cake molds, candy molds and muffin pans</p> <p>IC 029. US 046. G & S: Food products, namely, fruit and vegetable purees used as ingredients of foods; fresh pureed fruits and pureed vegetables; frozen pureed fruits and pureed vegetables</p>
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	<p>02.01.20 - Bakers (men); Butchers (men); Chefs (men); Men, butchers, chefs, and bakers</p> <p>02.01.31 - Men, stylized, including men depicted in caricature form</p> <p>05.11.01 - Beets; Carrots; Parsnips; Potatoes</p>
Serial Number	77336128
Filing Date	November 24, 2007
Current Filing Basis	1B
Original Filing Basis	1B
Published for	April 15, 2008

Opposition

Owner (APPLICANT) THE SNEAKY CHEF, INC CORPORATION NEW YORK Suite 13A 24 North Astor Street
Irvington NEW YORK 10533

Attorney of Record SHEILA J. LEVINE

Prior Registrations 3360525

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHEF" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) black, blue and orange is/are claimed as a feature of the mark. The mark consists of "the SNEAKY chef" in stylized letters and design of a winking chef drawn in black, in a blue toque with a finger to her lip and holding an orange and black carrot behind her back with her other hand; the words "the" and "chef" are in lower case blue letters and "SNEAKY" is in upper case orange letters.

Type of Mark TRADEMARK

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THE SNEAKY CHEF

**Word Mark
Goods and
Services****THE SNEAKY CHEF**

IC 021. US 002 013 023 029 030 033 040 050. G & S: Housewares and kitchen ware, namely, cooking equipment and accessories in the nature of spatulas, mixing bowls, tongs, mashers, storage bowls with covers, baking sheets, cookie sheets, cookie presses, cookie and cake molds, candy molds and muffin pans

IC 029. US 046. G & S: Food products, namely, fruit and vegetable purees used as ingredients of foods; fresh pureed fruits and pureed vegetables; frozen pureed fruits and pureed vegetables

**Standard
Characters
Claimed****Mark Drawing
Code**

(4) STANDARD CHARACTER MARK

Serial Number

77315353

Filing Date

October 28, 2007

**Current Filing
Basis**

1B

**Original Filing
Basis**

1B

Published for

April 15, 2008

Opposition

Owner (APPLICANT) THE SNEAKY CHEF, INC CORPORATION NEW YORK Suite 13A 24 North Astor Street Irvington NEW YORK 10533

Attorney of Record SHEILA J. LEVINE

Prior Registrations 3360525

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Type of Mark TRADEMARK

Register PRINCIPAL

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Word Mark
Goods and Services

THE SNEAKY CHEF

IC 016. US 002 005 022 023 029 037 038 050. G & S: books and related printed publications, namely, books, newsletters, and pamphlets all in the fields of nutrition, food preparation and the culinary arts. FIRST USE: 20070316. FIRST USE IN COMMERCE: 20070316

IC 041. US 100 101 107. G & S: Educational services, namely, conducting classes, courses, workshops, seminars, conferences and demonstrations in the fields of nutrition, food preparation and the culinary arts; entertainment in the nature of a television series in the field of nutrition, food preparation and culinary arts. FIRST USE: 20061021. FIRST USE IN COMMERCE: 20061021

IC 043. US 100 101. G & S: Providing information in the field of food preparation and the culinary arts; providing information in the field of food preparation and the culinary arts via the Internet. FIRST USE: 20061001. FIRST USE IN COMMERCE: 20061001

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

02.03.24 - Women, stylized, including women depicted in caricature form
05.11.01 - Beets; Carrots; Parsnips; Potatoes
09.05.06 - Chef's Hat

Serial Number

77254965

Filing Date

August 14, 2007

Current Filing Basis 1A

Original Filing Basis 1A;1B

Published for Opposition April 1, 2008

Owner (APPLICANT) THE SNEAKY CHEF, INC CORPORATION NEW YORK Suite 13A 24 North Astor Street Irvington NEW YORK 10533

Attorney of Record GERALD M. LEVINE

Prior Registrations 3360525

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHEF" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) blue and orange is/are claimed as a feature of the mark. The mark consists of "the SNEAKY chef" in stylized letters and design of a winking chef in a blue and white toque with a finger to her lip and holding a carrot behind her back with her other hand; the words "the" and "chef" are in lower case blue letters and "SNEAKY" is in upper case orange letters.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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THE WALL STREET JOURNAL. ONLINE

October 19, 2007

How Another Seinfeld Scored Her Own Big Hit

**Cookbook by Comic's Wife
Soars After Oprah Interview;
Could It Be a Million-Seller?**

By **JEFFREY A. TRACHTENBERG**
October 19, 2007

HarperCollins Publishers was sure Jessica Seinfeld's new cookbook for feeding kids healthily would be a success: It initially printed 200,000 copies and then added another 140,000 in reserve before its Oct. 5 publication date.

It wasn't nearly enough. Ever since Ms. Seinfeld, the wife of comedian Jerry Seinfeld, appeared on "The Oprah Winfrey Show" on Oct. 8, demand has far outstripped supply. Amazon.com is telling its customers they will have to wait three to six weeks to get a copy of Ms. Seinfeld's book, "Deceptively Delicious: Simple Secrets to Get Your Kids Eating Good Food."

Altogether, the publisher says it has ordered 2.3 million copies, and expects to sell at least one million by Christmas.

With the unexpected success has come some unexpected controversy. The book's popularity has prompted the author of another children's nutrition book to note similarities between the two titles, even as sales of her book are being lifted by Ms. Seinfeld's fame.

Collins, the division of HarperCollins that published Ms. Seinfeld's book, is repudiating the complaint. Its biggest fear is that it may be losing sales with Ms. Seinfeld's book unavailable at many stores.


"It's a nightmare scenario you never want to wake up from: Demand that is so intense, sales velocity so high, that you are hard-pressed to keep up," says Steve Ross, president of the Collins division. "We're going to have a lag time of two to three weeks because we don't have enough books."

Ms. Seinfeld's book is No. 1 today on the Wall Street Journal's nonfiction best-seller list. It will also be No. 1 on the hardcover advice list published in the New York Times Book Review section dated Oct. 28. Mr. Ross says he thinks that Ms. Seinfeld's book may also slip a slot or two down the Times list because of the continuing shortage.



The book has been No. 1 on Amazon.com's best-seller list, but that could also change because Amazon can't get enough books to keep pace

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John Dolan/HarperCollins

Jessica Seinfeld and her son Shepherd

with orders. A spokeswoman said the online bookseller is working to get more books as soon as possible. Some Barnes & Noble stores are out of copies as well.

"Even the big chains are out of it," said Alan Zumel, a salesman at The Cook's Library, a Los Angeles bookstore specializing in cookbooks.

The premise of Ms. Seinfeld's book is that meals kids enjoy, such as lasagna, tacos and pita pizzas, can be tweaked to be more nutritious. She sneaks carrot and spinach purees into a recipe for brownies, while a recipe for chicken alphabet soup includes cauliflower puree. In her introduction, Ms. Seinfeld notes: "This book is nothing more than one mom's coping skills."

During Ms. Seinfeld's appearance on Ms. Winfrey's talk show, the host praised the book and snacked on some of Ms. Seinfeld's recipes before sharing them with her audience. "After Oprah, requests began pouring in from customers at the stores and online," says Liz Harwell, director of merchandising for Barnes & Noble Inc., the nation's largest book retailer.

Ms. Seinfeld's appearance on the show also ignited a culinary discussion on one of Ms. Winfrey's online message boards and across the Web. Some viewers have noted that adding pureed vegetables to favorite recipes isn't a new idea. One writer specifically cited, "The Sneaky Chef: Simple Strategies for Hiding Healthy Foods in Kids' Favorite Meals," by Missy Chase Lapine, published in April by the Running Press, an imprint owned by Perseus Books, LLC, an independent publisher.

The books by Ms. Seinfeld and Ms. Lapine feature similar recipes for macaroni and cheese that have vegetable purees mixed in. Both books also have recipes for chocolate pudding with pureed avocado. However, while the concepts are similar, the recipes differ in their specifics.

"Our author is concerned that there are many significant similarities between 'The Sneaky Chef,' and the Seinfeld book," says David Steinberger, chief executive of Perseus, in an email. "We agree that the books appear to be very similar in many ways. But we don't know enough about how this happened to accuse anyone of wrongdoing. We have a bestseller in 'The Sneaky Chef.' We feel it is a terrific book and right now we are focused on selling more copies of it."

In a telephone interview, Ms. Seinfeld, a mother of three, said that "I've never held that book in my hands, and I swear that on my life. When I was told there was a book of a similar type, I told myself I would never go near it. And there is no way I borrowed anything. Why would I spend my time doing that? I never claimed to have invented pureeing: Many grandmothers would say it is something they've always done. I created something that I thought would help other families."

Mr. Ross of Collins says there are similarities among all books that treat sneaking nutritious elements into children's food, of which he said there is "practically a library." Mr. Ross also says that Collins has reviewed the concerns expressed by Ms. Lapine and "found them to be without merit."

In her introduction, Ms. Seinfeld explains how she came up with her book: "Then, one evening while I was cooking dinner, pureeing butternut squash for the baby and making mac and cheese for the rest of us, I had the crazy idea of stirring a little of the puree into the macaroni. And so I did." Ms. Lapine didn't return calls seeking comment.

Ms. Lapine originally submitted her proposal to Collins, says Mr. Ross. But it was rejected on

May 23, 2006, because it was deemed too similar to another book, "Lunch Lessons: Changing the Way We Feed our Children," that Collins eventually published, Mr. Ross says.

Less than two weeks later, on June 9, an agent submitted a proposal for Ms. Seinfeld's book. A different Collins editor decided to set up a meeting because of the author's celebrity status, and the editor thought it was an interesting subject, says Mr. Ross. Ms. Seinfeld came in, and cooked food for the attendees of the meeting, and "basically wowed everybody who attended." Ms. Seinfeld also appeared to be a passionate advocate for feeding children healthy food, says Mr. Ross. As a result, Collins bought the book.

To keep pace with the demand for Ms. Seinfeld's book, Collins is now employing the full capacity of six binderies to churn out more copies. Mr. Ross says the books are being shipped directly to retail stores rather than to a HarperCollins warehouse. Although the spiral binding has complicated the manufacture of the book, Mr. Ross says that Collins is shipping new copies every day, with weekly tallies in the hundreds of thousands.

Mr. Ross says the books will continue to be manufactured and shipped through the end of January. "We're fairly confident that we'll sell between one million copies and 1.5 million copies through Dec. 25. And that's sell, not ship," he says. The book is also expected to sell well in January, a month when many consumers turn to bookstores for diet help. HarperCollins is owned by **News Corp.**, which has agreed to buy The Wall Street Journal's publisher, **Dow Jones & Co.**, for more than \$5 billion.

Meanwhile, Ms. Lapine's book will be No. 9 on the New York Times paperback advice list for Oct. 28.

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